

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

CA 76-7492

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

No. CA 76-7492

DR. DAVID SIROTA, FRANCES NAISON, IDA SIROTA
 and JOHN P. LYCETTE, JR.,

Plaintiffs,

against

ECONO-CAR INTERNATIONAL, INC., WESTINGHOUSE
 ELECTRIC CORPORATION, JAMES W. CROWLEY, BER-
 RIEH H. BECKS, and BERRIEN H. BECKS, WILLIAM
 FRANK O'ROURKE, and FLORIDA BANK AND TRUST
 COMPANY AT DAYTONA BEACH, as EXECUTORS OF
 THE ESTATE OF GUY B. ODUM.

Defendants.

JAMES W. CROWLEY and BERRIEN H. BECKS,

Third-Party Plaintiffs,

against

POWELL, GOLDSTEIN FRAZER & MURPHY, a partnership.
Third-Party Defendant.

ABRAHAM & CO. INC.,

Claimant-Appellant

against

SPENGARN & CO., INC., and SATNICK-JAPHA, INC.,
Claimants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK

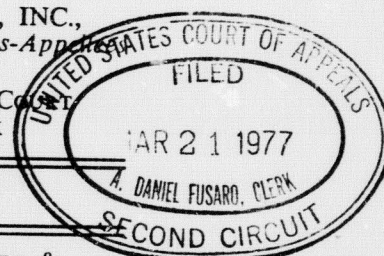
JOINT APPENDIX

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INDEX

	Page
United States District Court Docket (72) Civ. 4899	A- 1
Decision dated January 15, 1974	A- 8
Order dated February 7, 1974	A-19
Notice to Class, dated April 23, 1975, with Stipulation of Settlement	A-24
Excerpt from Plaintiffs' Memorandum in Support of Proposed Settlement	A-37
Order and Judgment, dated July 15, 1975	A-44
Decision dated June 24, 1975	A-50
Affidavit of Stuart L. Sindell, dated March 5, 1976	A-55
Exhibits Annexed	
Exhibit A - Stipulation of Settlement dated February 5, 1973	A-65
Exhibit B - Abraham letter dated February 5, 1973	A-69
Exhibit C - Abraham release of Satnick- Japha and Spingarn	A-71
Exhibit D - Decision of NASD arbitrators	A-72
Exhibit E - NASD letter of February 27, 1973	A-74
Exhibit F - Satnick-Japha release of Abraham	A-75
Exhibit G - Spingarn release of Abraham	A-77
NASD Forms 101, dated November 4, 1971	A-79
Letters of November 8, 1971	A-81
NASD Rejection Form No. 801, dated November 9, 1971	A-83
Brukenfeld Delivery Bill, dated November 9, 1971	A-84
Spingarn letter dated November 15, 1971	A-85

	Page
Excerpt from Abraham Statement of NASD Claim	A-87
Abraham letter dated January 27, 1972	A-88
Brukenfeld letter dated February 1, 1973	A-90
Excerpt from Abraham Proof of Claim	A-91
Whitman & Ransom letter dated March 30, 1976 with letter of November 13, 1975 annexed	A-92
Decision and Order dated August 23, 1976	A-96
Notice of Appeal	A-100

UNITED STATES DISTRICT COURT DOCKET 72 CIV. 4899

D. C. Form No. 108 Rev.

TITLE OF CASE	ATTORNEYS
DR. DAVID SIROTA, FRANCES NAISON & IDA SIROTA	For plaintiff: Kaplan Kilsheimer & Foley 122 East 42nd Street NYC 10017
-Vst	
EGMO-CAR INTERNATIONAL, INC., & WESTINGHOUSE ELECTRIC CORP., and: JAMES W. CROWLEY, BERRIEN H. BECKS, and BERRIEN H. BECKS, WILLIAM FRANK O'ROURKE and FLORIDA BANK AND TRUST COMPANY AT DAYTONA BEACH, as the Executors of the Estate of GUY B. ODUM	9/23 as amended on 7-19-73
JAMES W. CROWLEY & BERRIEN H. BECKS, Third Pty Pltffs.	
-against-	
POWELL, GOLDBERG, FRAZER & MURPHY Third Pty Deft.	For defendant: WHITMAN & RANSCH 522 FIFTH AVE. NEW YORK, N.Y.
	Alexander & Green 3/22/74 120 Broadway, N.Y. 10005 299 Park Ave. RE-2-4290 NYC 10017 Attys. for Defts. Crowley & Becks O'Rourke & Florida Bank & Trust Co
	HART & HENNER (atty for 3rd Pty Deft. 10 E. 40th St. New York, N.Y. 10016 68620920

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISR.
J.S. 5 mailed X	Clerk	11/4/72	Kidder K-	15	15
J.S. 6 mailed ✓	Marshal	11/17/72	#		
Basis of Action: S.E.C Act of 1934, Misleading Proxy Statement.	Docket fee				
	Witness fees				
Action arose at:	Depositions				

(Class Action)

JUDGE METZNER

72 CIV. 4899

Dr. David Sirota, et al., vs. Econo Car International Inc. et al.

DATE	PROCEEDINGS	Date Order or Judgment Made
Nov 16-72	Filed Complaint issued summons, demand jury.	
DEC 4-72	Filed Summons and marshals ret. Served: Westinghouse Electric Corp. on 11/20/72.	
Dec 12-72	Filed Stip & Order that the time for dfts. to answer to complaint is extended to 1/8/73. So Ordered Metzner J.	
Jan 2-73	Filed stipulation and order extending defendants time to answer, etc. the complaint to 1/29/73, etc. So ordered. Metzner, J.	
Jan 15-73	Filed stipulation and order extending plaintiffs time to move pur. to Rule 11A for determination of class action, to 3/16/73. So ordered. Metzner, J.	
Feb 23-73	Filed stip & order that the time in which dfts. to answer plffs. Interrogatories and produce documents is extended to 2/20/73, So Ordered Metzner J.	
Mar 5-73	Filed dfts ANSWER TO the complaint.	W&R
Mar 6-73	Filed dfts response for production of documents.	
Mar 6-73	Filed dfts answers to plffs Interrogatories.	
Mar 14-73	Filed stip & order that the time for the pft. to move whether this action is to be maintained as a class action is extended to 5/16/73, So Ordered Metzner J.	
Mar 20-73	Filed stip & order that the plffs may file the annexed amended complaint. So Ordered Metzner J.	
Mar 22-73	Filed Plffs amended complaint.	
Mar 26-73	Filed plff's interrogs. to deft (2nd series)	W&R
Apr 3-73	Filed Dfts ANSWER to AMENDED COMPLAINT.	
May 2-73	Filed Stip and Order that the time for dfts to respond to plffs' interrogs. (second series) is extended to 5-7-73. METZNER, J.	
May 1-73	Filed answers to Plffs' Interrogs.	
May 17-73	Filed Dfts Notice of Deposition of Plffs upon oral examination.	
May 17-73	Filed Dfts Interrogs propounded to Plffs (First Series)	
May 17-73	Filed Dft.'s Stip & Order extending time to answer complaint from 5/11/73 to 6/10/73. Metzner, J.	
May 24-73	Filed Notice of Motion Ret. 6/4/73 at 10 AM ROOM 2201 re: file second amended complaint.	
May 24-73	Filed Memorandum of Law in support of plffs' motion for leave to file second amended complaint.	
May 24-73	Filed Notice of Motion Ret. 6/4/73 at 10 AM Ret. ROOM 2201 re: Maintain as Class Action.	
May 24-73	Filed Plaintiffs' Memorandum of Law in support of motion for class action determination.	
Jun 4-73	Filed Dfts Stip & Order adjourning plffs' motion from 6/4/73 to 6/29/73; pursuant to Rule 23(c)(1); plffs' motion to Rules 15 & 21 adjourned from 6/4/73 to 6/29/73; plffs' motion time to answer interrogs (first series) from 6/13/73 to 6/29/73; depositions of plffs held on 6/5/73 adjourned without date, etc. Metzner, J.	
July 2-72	Filed plffs' answers to interrogs.	
Jul 19-73	Filed plffs. interrogs. to individual dfts first series.	
Jul 23-73	Filed stip. and order that plffs. may file and serve their 2nd amended complaint (a copy of which is annexed hereto) and plffs motion for class action is adj. to 8-6-73 at the same time and place. -- Metzner, J.	
Jul 19-73	Filed SECOND AMENDED COMPLAINT and demand for Jury Trial.	
7-31-73	Filed memo end. on motion dated May 24, 1973 for permitting plff. to file a second amended complaint---THIS MOTION is granted pursuant to the stipulation of the parties dated July 2, 1973. So ordered Metzner, J. m/n	
8-8-73	Filed stip. and order that plffs. motion for class action cert. is adj. from Aug. 6, 1973 to Sept. 5, 1973. Opposing papers are to be served on or before Aug. 27, 1973. So ordered, Metzner, J.	

cont'd on page 2

BEST COPY AVAILABLE

72 Civ. 4899 Dr. David Sirota, et al -vs- Econo-Car Int'l, et al

72 Civ. 4899

METZNER, J.

CIVIL DOCKET

Page 3

DATE	FILINGS - PROCEEDINGS	AMOUNT REPAID IN EMERGENCY RETURNS
Aug. 15-73	Filed plttfs' interrogs.	
Sept. 11-73	Filed stip. and order that the time for defts. James W. Crowley and Berrien H. Becks to answer complaint is ext. from Aug. 29, 1973 to Sept. 21, 1973. So ordered, Metzner, J.	
Sept. 11-73	Filed stip. and order that the return day of the plttf's. motion for class determination is ext. from the 26th day of Sept., 1973 to Oct. 10, 1973 and the answering papers for the defts. Econo Car Intl. Inc. and Westinghouse Corp. will be served on the 17th day of Sept., 1973 and the answering papers for defts. James Crowley and Berrien Becks will be served on Oct. 3, 1973. So ordered, Metzner, J.	
Sept. 11-73	Filed stip. and order that plttfs. motion for class action certification is adj. from Sept. 5, 1973 to Sept. 26, 1973. Opposing papers are to be served on or before Sept. 10, 1973. So ordered, Metzner, J.	
Sep. 13, 73	Filed Supplemental Summons and Marshal's return served on Econo-Car Int. by Kaplan, dtd 7/19/73, Berrien H. Becks, by Kaplan, dtd 7/19/73; Crowley, by Kaplan, dtd 7/19/73; Florida Bank & Trust Co., by Kaplan, dtd 7/19/73.	
Sep. 21, 73	Filed Defts. Crowley & Becks ANSWER to compl int	A&G
Sep. 24, 73	Filed for Westinghouse and Econo Car Int. Affidavit	
Sep. 24, 73	Filed Deft. Westinghouse Electric Corp & Econo Car International Memorandum of Law in Opposition to Plttfs' Motion for class action determination.	
OCT. 1, 73	Filed for Third Party Plttfs. Demand Trial by Jury Complaint.	
Oct. 3, 73	Filed for Defts. James Crowley & Berrien Becks, ANSWERS to Plttfs' Interrogatories to Individual Defts. 1st Series.	
Oct. 3, 73	Filed for Defts. Crowley & Becks, Affidavit in opposition to plttfs. motion	
Oct. 3, 73	Filed Memorandum of Law of Defts. Crowley & Becks.	
October 3, 73	Filed answers to Plttfs. Interrogatories.	
Oct. 2, 73	Filed for Defts & 3rd Pty. James W. Crowley & Berrien Becks, Notice of Filing Summons and 3rd Pty Complaint	A&G
Oct. 9-73	Filed stip. and order that the time of defts. to answer plttfs. interrog. (3rd set) is ext. to Oct. 9, 1973. So ordered, Metzner, J.	
Oct. 10-37	Filed plttfs. reply memorandum.	
Oct. 10-73	Filed affdt. of Robert N. Kaplan (for plttf.) in support of motion for class action certification (rule 23).	
Oct. 15-73	Filed summons and entered Marshal's return. Served on: Powell, Goldstein, Frazer and Murphy, by R. Patrick on 10-4-73.	

over

C

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
Oct-29-73	Filed stip. and order that the time for 3rd pty plttf. and 3rd pty deft. to answer is extended to and including Nov-26-73. -- Metzner, J.	
Oct-30-73	Filed Defts. Westinghouse Electric Corp. & Econo Car Int. Notice of Motion and Affdvt. returnable 11/13/73 for an order granting the Deft. leave to serve an answer to plttf's amended complaint. etc.	
Oct-30-73	Filed Answer to Second Amended Complaint for Defts. Westinghouse Electric Corp. - and Econo Car. Int.	
Nov.9-73	Filed Stipulation for Deft. EconoCar International Inc. & Westinghouse Electric Corp. and Deft. James Crowley and Berrien H. Becks that the return day of motion seeking leave to serve an answer to Pltffs. second amended complaint is adj. to 11/13/73 to 11/20/73 w/answering affdts. - not later than 11/15/73 - Metzner, J.	
Nov.14-73	Filed Stipulation of Defts. Econo Car Int. and Westinghouse Electric Corp. extending return date of Motion answer to plttfs' second amended complaint to 11/20/73 So ordered -- Metzner, J.	
Nov.28-73	Filed for 3rd Pty Deft. ANSWER to 3rd pty Complaint	BZH
Dec-26-73	Filed stip. and order ext. defts. time to respond to plttf's interrogs. (3rd series) to Jan-3-74 -- Metzner, J.	
Dec-21-73	Filed plttf's notice to take deposition of deft. Westinghouse Electric on 1-4-74.	
Jan-16-74	Filed memo endorsed on defts. motion filed 10-30-73: This motion (granting deft. Westinghouse Electric Corp. leave to serve an answer to plttfs 2nd amended complaint, containing a cross claim against the other 3 defts.) is granted without opposition. So ordered. - Metzner, J. m/n	
Jan-15-74	Filed OPINION #10227...for reasons indicated, we therefore conclude that common questions do predominate and that persons who purchased the Interim Certificates after the merger are properly entitled to class action treatment. However we do agree with defendants that the class be divided into two sub-classes under Rule 23(c)(4)(B) etc. Defendants also urge that the definition of the classes be restricted to exclude all officers, directors, etc. Innocent persons might be harmed by such action. The request is denied with leave to renew at the appropriate time. Rule 23(d) Finally, defendants argue that a proof of claim form be appended to the notice which is sent to the classes. The sending of a proof of claim form is not settled in this Circuit. In accordance with the prevailing law in this circuit, plaintiff must bear the cost of notice to the classes. Settle order. -- Metzner, J. m/n	
Feb-8-74	Filed order that the action herein be maintained as a CLASS ACTION as indicated; ordered that prior to 2-10-74, deft. Westinghouse Electric Corp. shall provide plaintiffs' attorneys with a list containing names and addresses of all class members; notice to be mailed in for annexed hereto by 3-1-74 and within 10 days from mailing of notice, plttf's Atty. to file affdvt. stating date of mailing, etc. -- Metzner, J. m/n	

D

72 Civ 4899

page 5

Judge Metzner

DATE	PROCEEDINGS
Mar-12-74	Filed plaintiff's affdvt. of Robert N. Kaplan pursuant to the direction in the last ordered paragraph of this court's order of 2-7-74
Mar-25-74	Filed pltf's notice to take depositions of Norman Kaufman on 4-16-74.
Mar-22-74	Filed notice of change of address of Attorneys for deft. and 3rd pty pltf.
Mar-22-74	Filed deft. and 3rd pty pltf's notice of change of address of his attorneys (2nd notice)
Mar-27-74	Filed letter by Paul V. McPeake dated 3-7-74 for exclusion from class.
Mar-27-74	Filed letter by R.B. Quincy, Jr. dated 3-11-74 for exclusion from class.
Apr-15-74	Filed one envelope containing exclusions.
Apr-17-74	Filed stip. and order that the time of defendants Crowley & Beck to file answers to the cross-claims of defendants Westinghouse Electric Corp. and Econo-Car International is ext. to 4-30-74 -- Metzner, J.
Apr-29-74	Filed plaintiff's requests for documents - 2nd series to Econo-Car International, Inc. and Westinghouse Electric Corp.
Apr-29-74	Filed plaintiff's requests for documents - 1st series to defendants Crowley & Becks.
May- 1-74	Filed ANSWER to cross-claims of defendants Econo-Car Internat'l Inc. and Westinghouse Electric Corp. (answer of James C. Crowley) A&G
May- 1-74	Filed ANSWER of deft. Berrien H. Becks to cross-claims of defendants Econo-Car International, Inc. and Westinghouse Electric Corp. A&G
Jun- 4-74	Filed plaintiffs request for documents - first series to 3rd pty deft. Powell, Frazer & Murphy.
6/25/74	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Schuchman</i>
Jun-28-74	Filed stip. and order that the time of 3rd pty deft. to serve response to pltf's request for documents (first series) is ext. to 7-16-74
Jun-26-74	Filed defendants Crowley and Beck's response to request for production.
6-25-74	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Schuchman</i>
Jul-22-74	Filed response and objections of 3rd pty deft. to request for production - first series
Jul-30-74	Filed defendants Econo-Car and Westinghouse Electric's notice to take depositions of Ida Sirota on 8-29-74
Jul-30-74	Filed defendants Econo-Car and Westinghouse Electric's notice to take depositions of Dr. David Sirota on 8-27-74
Jul-30-74	Filed defendants Econo-Car and Westinghouse Electric's notice to take depositions of John P. Lycette, Jr. on 8-30-74
Jul-30-74	Filed defendants Econo-Car and Westinghouse Electric's notice to take depositions of Francis Maison on 8-28-74
8-5-74	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Schuchman</i>
Aug-13-74	Filed defendants answers to interrog.
Aug-20-74	Filed defts' Econo-Car and Westinghouse's notice to take depositions of Stephen Brown on 9-25-74
Aug-16-74	Filed deft's Econo-Car and Westinghouse's interrog. to pltf. (2nd series)

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DATE	PROCEEDINGS
Aug-7-74	Filed defts Econo-Car International and Westinghouse Electric Co.'s notice to take depositions of pltf. and others as indicated herein.
Sep-4-74	Filed Defts. Econo-car Int. & Westinghouse Electric Notice of Depositions of Frank Hug and Adams & Beck on 9/24/74 10AM
Sep-11-74	Filed Defts. Notice of Depositions of persons listed of James King and Adams & Beck on 9/24/74 at 10AM.
Sep-27-74	Filed plaintiffs answers to defendants' interrog. second series.
Sep-24-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber
Oct-18-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber
Sep-27-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber
Nov-5-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber
Nov-11-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber
Dec-9-74	PRE-TRIAL CONFERENCE HELD BY Mag. Schreiber
Apr-3-75	Filed stipulation of settlement by parties (proposed)
Apr-3-75	Filed stipulation re settlement negotiations as indicated. So ordered. - Metzner, J.
Apr-3-75	Filed order that a HEARING pursuant to Rule 23 re settlement will be held on 6-15-75 at 4 PM in Room 705; defendants shall give notice as indicated herein. Any person objecting to proposed settlement or the judgment to be entered herein, including applications for counsel fees or any other matter shall appear at the hearing in person or by counsel and show cause why the settlement should not be approved, etc. - Metzner, J. m/n
04-03-75	Filed ANSWER of defendants Berrien H. Becks, William Frank O'Rourke and Florida Bank and Trust Co. at Daytona Beach A&G
04-03-75	Filed ANSWER of defendants Berrien H. Becks, William Frank O'Rourke and Florida Bank and Trust Co. at Daytona Beach to CROSS-CLAIMS of defendants Econo-Car International, Inc. and Westinghouse Electric Corp. A&G
05-16-75	Filed pltf's affdvt. of Robert N. Kaplan in support of pltf's fee application.
05-16-75	Filed pltf's memorandum in support of their fee application.
05-16-75	Filed pltf's memorandum in support of proposed settlement.
05-14-75	Filed by deft. Westinghouse Electric Corp. affdvt. of service by mail of notice and stip. of settlement on the class members of the plaintiff's class.
06-09-75	Filed defts' Econo-Car International, Inc. and Westinghouse Electric Corp. memorandum in support of the proposed settlement.
06-16-75	Filed Affdvt. of Lawrence Dolen of proof of publication, on behalf of deft. Westinghouse Electric Corp.
06-24-75	Filed OPINION #42657...Under all the circumstances the proposed settlement is fair and equitable, not only when you view the settlement against the claims made, but also from the fact that no stockholder has appeared in opposition to the settlement. Counsel fee awarded in the sum of \$155,000. The requested amount of \$3,497.93 for expenses is approved. Settle Judgment on notice. -- Metzner, J. m, n
07-16-75	Filed order and judgment that the stipulation of settlement is fair and it is directed that the settlement shall be consummated in accordance with the terms of the stip. of settlement, etc. as indicated herein. Kaplan, Kilsheimer & Foley, attorneys for plaintiffs are allowed attorneys fees of \$155,000.00 to be paid as indicated herein. Metzner, J. -- Judgment entered. -- Clerk.
09-09-75	Filed deft. Westinghouse Electric Corp's affdvt. of service by mail of notice for filing of claims
09-19-75	Filed proof of notice of publication.
10-21-75	Filed defts notice of proof of publication of settlement and dismissal.

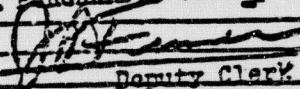
(Cont Page 7)

PROCEEDINGS

DATE	PROCEEDINGS
11-25-75	Filed stip. & order of time to submit proof of claim to 12-15-75 and that the time during which any party may seek any claim by notifying in writing the plaintiff, which the court has ruled in order to 12-23-75 - Metznar, J.
12-12-75	Filed petition by Spingarn & Co. to rescind claim
12-15-75	Filed petition by Spingarn & Co. to rescind claim
03-05-76	Filed Memorandum of Law submitted on behalf of Claimants, Spingarn & Co., Inc. and Satrick-Japha, Inc. supporting Whitman & Ransom's determination that claimants are entitled to participate in the settlement fund for Westinghouse Interim Certificates and denying the claim of Abraham & Co., Inc.
03-05-76	Filed memorandum on behalf and in support of Proof of claim of Abraham & Co., Inc.
03-05-76	Filed by affdvt. of Stuart L. Sindell on behalf of Abraham & Co., Inc.
04-02-76	Filed Reply Memorandum in support of Proof of claim of Abraham & Co., Inc.
04-02-76	Filed Memorandum on behalf of Claimants, Spingarn & Co. et al in reply to Memorandum by Abraham & Co., Inc.
Jul. 13, 1976	Filed stip. and order that the annexed list of claimants have been approved to participate in the remaining settlement fund etc. as indicated. So ordered, Metzner, J.
7-13-76	Filed copy of notice sent to claimants as part of class action.
7-13-76	Filed letter dtd. 4/30/76 from the law office of Whitman and Ransom for cert. Econo Car Intl., Inc. and Westinghouse Electric Corp.
08-23-76	Filed OPINION #44998... claims of Spingarn and Satrick-Japha are upheld. So ordered. -- Metzner, J. m/n
09-23-76	Filed notice of appeal by Abraham & Co. from order (opinion #44998) entered on 8-23-76 - copy mailed.
10-13-76	Filed by Abraham & Co. affdvt. and notice of motion to extent time to appeal - ret. 10-22-76
10-13-76	Filed by Abraham & Co. as memorandum in support of above motion.
10-18-76	Filed on behalf of appellees Spingarn & Co., Inc. and Satrick-Japha, Inc. affdvt. of David A. Ruttenberg in opposition to motion by appellant Abraham & Co. to extent time to file a notice of appeal.
10-14-76	Filed by Abraham & Co., Inc. bond #S763592 for costs on appeal -- \$250.00 -- Northwestern National Insurance Co.
11-17-76	Filed true copy of USCA order that the motion of counsel to dismiss the appeal from D.C. order for lack of jurisdiction is denied. Ordered that leave to return to the US D.C. for determination of whether there was excusable neglect entitling appellant to an extension of time to file notice of appeal is granted. m/n
12-06-76	Filed letter to Judge Metzner by Brauner Baron Rosenzweig Kligler & Sparber, 120 B'way, NYC 10005 dated 10-22-76 re appeal of Abraham & Co. with copy of USCA order (filed in our court on 11-17-76) attached.
12-06-76	Filed memo endorsed on Abraham & Co., Inc.'s motion for ext. of time to appeal filed on 10-13-76: Granted. So ordered. -- Metzner, J. m/n

A TRUE COPY

RAYMOND E. BERGMAN, Clerk

By  Deputy Clerk

DECISION DATED JANUARY 15, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
DR. DAVID SIROTA, FRANCES NAISON, :
IDA SIROTA and JOHN P. LYCETTE, JR., :

Plaintiffs, :

-against- :

ECONO-CAR INTERNATIONAL, INC., :
WESTINGHOUSE ELECTRIC CORPORATION, :
JAMES W. CROWLEY, BERRIEN H. BECKS, :
and BERRIEN H. BECKS, WILLIAM FRANK :
O'ROURKE and FLORIDA BANK AND TRUST :
COMPANY AT DAYTONA BEACH, as the :
Executors of the Estate of GUY B. ODUM, :

Defendants. :
----- x

72 Civ. 4899

40227

A P P E A R A N C E S

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FILED
U.S. DISTRICT COURT
JAN 15 4 53 PM '74
S.D.C.N.Y.

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METZNER, D. J.:

Plaintiffs have moved for an order pursuant to Rule 23, Fed. R. Civ. P. declaring this suit a class action. Three of the plaintiffs owned shares of a merged company (see details below), and the fourth plaintiff purchased his shares after the merger.

The action was brought to redress alleged violations of the Securities Exchange Act of 1934 arising out of the issuance of an allegedly false and misleading proxy statement. The proxy statement was issued by Americar, Inc. (Americar) on October 9, 1970 in connection with its proposed merger into Westcar, Inc. (Westcar), a wholly owned subsidiary of the Westinghouse Electric Company (Westinghouse). (Westcar is now known as Econo-Car International, Inc. (Econo-Car).) Named as defendants are Econo-Car, Westinghouse and various former directors and officers of Americar. Counts 1-3 charge Westinghouse and Econo-Car with violations of Sections 14(a) and 10(b) of the 1934 Act. Count 4 alleges that the individual defendants were engaged in inside trading in violation of Section 10(b).

In the proxy statement Americar advised its shareholders of a special meeting of shareholders scheduled for October 20, 1970 to consider the merger into Econo-Car. The proxy statement revealed that under the merger agreement 16 per cent of the Westinghouse shares to be received by each Americar shareholder would be held in an escrow account to indemnify Westinghouse and Econo-Car against certain liabilities referred to in the escrow agreement. These escrow shares were to be represented by Interim Certificates to be given to Americar shareholders evidencing their rights to receive shares of Westinghouse common stock upon termination of the escrow account.

After Americar's Board of Directors recommended approval of the merger, shareholder approval followed on October 20, 1970, and the merger became effective on October 30, 1970.

After the exchange of stock, an active market in the Interim Certificates developed. On October 29, 1971, two days before the deadline for claiming under the escrow agreement, Westinghouse publicly announced that it was making a claim against

the escrow account. This claim was for an amount substantially in excess of the value of the escrow account, and included claims for (1) Restricted Liabilities (as defined in the escrow agreement) of \$1,932,000 that would have to be paid by Westinghouse on behalf of Americar, (2) uncollected receivables of \$1,475,000, and (3) an income deficiency of \$256,000. Due to Westinghouse's claims, the escrow agent delivered the escrow stock to Westinghouse pursuant to the agreement. Plaintiffs now claim their Interim Certificates are worthless.

In this action plaintiffs allege that the proxy statement did not adequately describe the reasons for the escrow account or apprise the Americar shareholders of the risks involved in the agreement with Westinghouse. The class plaintiffs seek to represent numbers about 1,500 and includes:

"All persons who received, during the period October 30, 1970, to and including October 29, 1971, Interim Certificates representing common shares of Westinghouse Electric Corporation (issued at the time of the Americar-Westcar merger)."

Defendants Westinghouse and Econo-Car do not contest the appropriateness of class action treatment

under Rule 23 as to the American shareholders who received Interim Certificates in connection with the merger of October 30, 1970. We agree. However, these defendants do oppose class action certification as to those persons who purchased Interim Certificates on the open market. Their opposition as to these post-merger purchasers is that individual questions of law or fact predominate over common questions. See Rule 23(b)(3).

Defendants maintain that because the Interim Certificates were being traded on the open market at substantially lower prices than Westinghouse common stock, the purchasers of these certificates were "probably" speculators who were willing to take advantage of the price spread and prepared to risk the escrow contingencies. It is claimed that as to each of these purchasers individual questions exist as to their reliance on the proxy statement, which predominate over questions common to the class.

In rejoinder, plaintiffs assert that because of the allegedly misleading proxy statement, the market which developed after the merger in the Interim Certificates was misled and defrauded into valuing

these certificates at substantial prices. They trace the 10b-5 claims of these open market purchasers directly to the proxy statement since it was the only publicly issued document explaining the Interim Certificates.

Proof of reliance no longer appears to be a prerequisite to recovery in a 10(b) or 14(a) action involving nondisclosure. "All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in the making of this decision." Affiliated Ute Citizens v. United States, 406 U.S. 128, 153-54 (1972); Mills v. Electric Auto-Lite Co., 396 U.S. 375, 384 (1970); Chris-Craft Industries, Inc. v. Piper Aircraft Corp., 480 F.2d 341, 373 (2d Cir. 1973); Cohen v. Franchard Corp., 478 F.2d 115, 124, n.12 (2d Cir. 1973). Even assuming that proof of reliance is required, however, variations in that element between holders of the Interim Certificates prior to and after the merger are not so substantial as to make individual questions of fact predominate over common questions. Mersay v. First Republic Corporation of America, 43 F.R.D. 465, 471 (S.D.N.Y. 1968).

Simon v. Merril Lynch, Pierce, Fenner and Smith, Inc., 482 F.2d 880, 882-83 (5th Cir. 1973), relied on by defendants is inapposite since class action status was denied because the suit was based substantially on oral rather than written misrepresentations. Here the misrepresentations all allegedly stem from a single proxy statement. Common questions of law and fact are more likely to predominate where suit is based on a single written document containing the alleged misrepresentations and omissions. Korn v. Franchard Corp., 456 F.2d 1206 (2d Cir. 1972); Unicorn Field, Inc. v. Cannon Group, Inc., 60 F.R.D. 217, 221 (S.D.N.Y. 1973).

We therefore conclude that common questions do predominate and that persons who purchased the Interim Certificates after the merger are properly entitled to class action treatment.

However, we do agree with defendants that the class be divided into two sub-classes under Rule 23(c) (4)(B): the first embracing all Americar shareholders who received Interim Certificates as the result of the merger, and the second all open market purchasers.

The basis for this subdivision is that there are substantial legal differences between the two groups.

The shareholders of Americar who received the proxy statement prior to the merger do not have to prove scienter in order to establish their Section 14(a) claims. Mere negligence will suffice to invoke liability.

Gerstle v. Gamble-Skogmo, Inc., 478 F.2d 1281, 1300-01, 1302 (2d Cir. 1973). However, in order to prevail on their 10(b) claims, the only ground available to open market purchasers, scienter must be proved. Lanza v. Drexel & Co., 479 F.2d 1277, 1304 (2d Cir. 1973) (en banc). The test for this culpability under Rule 10b-5 has most recently been stated as "proof of a wilful or reckless disregard for the truth." Id.; see also, Republic Technology Fund, Inc. v. Lionel Corp., 483 F.2d 540 (2d Cir. 1973).

Defendants also object to the inclusion of persons who sold their Interim Certificates at any time prior to October 29, 1971, within the proposed classes. They argue that since the gravamen of the complaint is that the market in these Interim Certificates was overvalued because of the defendants' alleged

misrepresentations and omissions, any sellers prior to the time Westinghouse made its claim against the escrow account actually benefited from the fraud and thus cannot have been harmed.

This is really only a question of damages. A person who sold his Certificates might still have been the victim of the defendants' misrepresentations or omissions if his purchase was related thereto. The fact that he sold the Certificates prior to their complete worthlessness only goes to reducing the amount of damages he might recover.

Defendants also urge that the definition of the classes be restricted to exclude all officers, directors and insiders of Americar since the complaint charges three of this group with trading on inside information to the detriment of the classes. It appears that such exclusion would be premature at this time. Innocent persons might be harmed by such action. The request is denied with leave to renew at the appropriate time. Rule 23(d).

Finally, defendants argue that a proof of claim form be appended to the notice which is sent to

the classes. The sending of a proof of claim form is not settled in this circuit. Comoare, Unicorn Field, Inc. v. The Cannon Group, Inc., supra (Bruman, J.); Korn v. Franchard, 50 F.R.D. 57 (S.D.N.Y. 1970) (Mansfield, J.), with Ostroff v. Hemisphere Hotels Corp., CCH SEC. REG. REP. ¶ 94,009 (S.D.N.Y. June 1, 1973) (Bonsal, J.); Pearlman v. Gennaro, CCH SEC. REG. REP. ¶ 94,006 (S.D.N.Y. May 31, 1973) (Cannella, J.). Most recently, the Manual for Complex Litigation, 1 Moore, Federal Practice, Pt. 1.45 at 1-48 (2d ed. 1973), has stated that a proof of claim form violates the opting-out provisions of Rule 23 and therefore should not be included within the notice sent to the members of the class. I find that the claim form should not be appended to the notice to be sent to the classes. Cf., Abulaban v. R. W. Pressprich & Co., Inc., 51 F.R.D. 469 (S.D.N.Y. 1971).

In accordance with the prevailing law in this circuit, plaintiffs must bear the cost of notice

to the classes. Eisen v. Carlisle & Jacquelin,
479 F.2d 1005 (2d Cir.), cert. granted, 42 U.S.L.
Week 4236 (October 15, 1973).

Settle order.

Dated: New York, N. Y.
January 15, 1974

Charles M. Metzger
U. S. D. J.

ORDER DATED FEBRUARY 7, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 19

-----X
DR. DAVID SIROTA, FRANCES NAISON,
IDA SIROTA and JOHN P. LYCETTE, JR.,

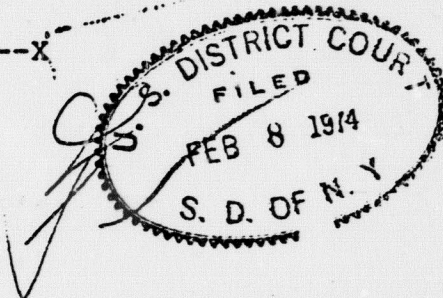
Plaintiffs,

-against-

ECONO-CAR INTERNATIONAL, INC.,
WESTINGHOUSE ELECTRIC CORPORATION,
JAMES W. CROWLEY and BERRIEN H. BECKS,

Defendants.

72 Civ. 4899
(CMM)



-----X
JAMES W. CROWLEY and BERRIEN H. BECKS,

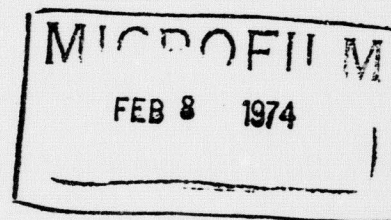
Third-Party Plaintiffs,

-against-

POWELL, GOLDSTEIN, FRAZER & MURPHY, a
partnership,

Third-Party Defendant.

COUNTER-ORDER



-----X
Plaintiffs having moved this Court for an order,
pursuant to Rule 23(c)(1) of the Federal Rules of Civil
Procedure, declaring that the action herein be maintained as
a class action,

NOW, upon reading and filing the Notice of Motion,
dated May 11, 1973, the affidavits of Robert N. Kaplan, duly
sworn to May 11 and October 9, 1973 in support of the Motion,
the affidavits of John M. Hadlock, sworn to September 17, 1973,
and of Donald M. Dunn sworn to October 3, 1973, in opposition
to the motion, and upon all the other papers and proceedings
had herein, and this Court having rendered an opinion, dated
January 15, 1974, it is hereby

ORDERED that this action shall proceed and be maintained as a class action, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, for and on behalf of the following classes:

- (a) All persons who were shareholders of Americar, Inc. and who received Interim Certificates representing shares of the common stock of Westinghouse Electric Corporation held in escrow as a result of the merger of Americar, Inc. and Westcar, Inc.
- (b) All persons who purchased Interim Certificates on the open market, during the period October 30, 1970 through October 29, 1971.

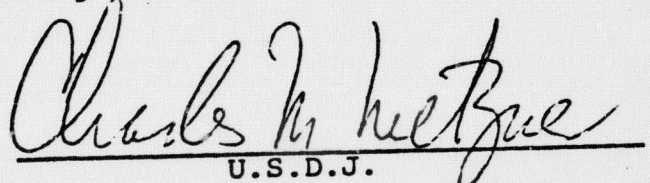
and it is further

ORDERED, that prior to February 10, 1974, defendant Westinghouse Electric Corporation shall provide plaintiffs' attorneys with a list containing the names and addresses of all class members; and it is further

ORDERED, that, pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure, on or before March 1, 1974, plaintiffs' attorneys shall mail by ordinary first class mail to all class members a Notice in the form annexed hereto, the expense of which shall be borne by plaintiffs; and it is further

ORDERED, that within ten (10) days from the mailing of said Notice, plaintiffs' attorneys shall file with the Clerk of this Court an affidavit showing that the annexed Notice was mailed as directed herein, stating the date of mailing.

Dated: February 7, 1974
AT NEW YORK, N.Y.


U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 21

-----X
DR. DAVID SIROTA, FRANCES NAISON,
IDA SIROTA and JOHN P. LYCETTE, JR.,

Plaintiffs,

-against-

ECONO-CAR INTERNATIONAL, INC.,
WESTINGHOUSE ELECTRIC CORPORATION,
JAMES W. CROWLEY and BERRIEN H. BECKS,

Defendants.

72 Civ. 4899
(CMM)

-----X
JAMES W. CROWLEY and BERRIEN H. BECKS,

Third-Party Plaintiffs,

-against-

POWELL, GOLDSTEIN, FRAZER & MURPHY, a
partnership,

Third-Party Defendant.

-----X
NOTICE OF PENDENCY OF CLASS ACTION

✓ TO: ALL PERSONS WHO RECEIVED INTERIM CERTIFICATES REPRESENTING SHARES OF THE COMMON STOCK OF WESTINGHOUSE ELECTRIC CORPORATION HELD IN ESCROW AS A RESULT OF THE MERGER OF AMERICAR, INC. AND WESTCAR, INC. ON OCTOBER 30, 1970 OR WHO PURCHASED SUCH INTERIM CERTIFICATES ON THE OPEN MARKET BETWEEN OCTOBER 30, 1970 and OCTOBER 29, 1971.

Pursuant to Rule 23 of the Federal Rules of Civil Procedure you are hereby notified that a civil action has been brought by the plaintiffs as a class action on behalf of the classes described in more detail below. This notice is sent to you in the belief that you are or may be a member of the classes whose rights may be affected by this litigation.

✓ The complaint filed in this action seeks money damages together with reimbursement of litigation costs and an award of attorneys' fees on behalf of the named plaintiffs and the members of the classes. The damages claimed are for losses incurred by former shareholders of Americar, Inc., by reason of Westinghouse Electric Corporation's (hereinafter Westinghouse) claim against the escrow fund established pursuant to the terms of the merger of October 30, 1970, between Americar, Inc. and Westcar, Inc., a wholly owned subsidiary of Westinghouse. Damages are also claimed for losses incurred by purchasers on the open market of

Interim Certificates representing shares of the common stock of Westinghouse held in such escrow fund. The claims are based upon alleged misstatements and omissions of material facts in a proxy statement of Americar, Inc., dated October 9, 1970, mailed to Americar shareholders, soliciting their vote on the merger. Among other things, it is alleged that the proxy statement inadequately described the terms and conditions contained in the escrow agreement annexed thereto under which Westinghouse could, during the escrow period, make claims against the stock held in escrow and thereby reduce the claims of former Americar shareholders to said escrowed stock. Liability is sought under Sections 10b and 14a of the Securities Exchange Act of 1934 (and rules 10b-5 and 14a-9 promulgated thereunder). In addition, liability is sought under Section 10(b) of the Securities Exchange Act of 1934 (and rule 10b-5 promulgated thereunder) and under common law fraud on behalf of all persons who may have purchased and suffered losses with respect to any Interim Certificates representing shares of the common stock of Westinghouse Electric Corporation held in escrow during the period, October 30, 1970 through October 29, 1971. In addition, it is claimed that during the period October 30, 1970 and October 29, 1971, defendants James W. Crowley, Berrien H. Becks and Guy B. Odum (whose personal representatives have been sued) sold Interim Certificates in violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5 promulgated thereunder because they had inside information at the time of the sales. A more detailed description of the claims may be found in the complaint on file with the clerk of the Court.

The Court has defined the classes as follows:

- (a) All persons who were shareholders of Americar, Inc. and who received Interim Certificates representing shares of the common stock of Westinghouse held in escrow as a result of the merger of Americar, Inc. and Westcar, Inc.
- (b) All persons who purchased Interim Certificates on the open market, during the period October 30, 1970 through October 29, 1971.

YOU WILL BE CONSIDERED A MEMBER OF A CLASS UNLESS YOU REQUEST TO BE EXCLUDED. The Court will exclude any member of the classes who so requests in writing mailed to the clerk of the Court which is received by the clerk on or before April 15, 1974. The address of the Clerk of the Court is: Clerk of the Court, U. S. Courthouse, Foley Square, New York, N.Y. 10007. Such request shall refer to this action as "Dr. David Sirota, et al. v. Econo-car International, Inc. et al., 72 CIV 4899 CMM" and shall include the name and address of the member requesting exclusion, the date or dates of any purchase of shares represented by Westinghouse Interim Certificates, the respective number of shares purchased and represented by said Interim Certificates, and, if any shares were sold, the date sold and the net price received.

Any member of the classes not electing to be excluded will be bound by any judgment entered in the action, whether favorable or not, and said judgment will include all members who do not request to be excluded. Any member who does not request exclusion may, if he desires, enter an appearance through his own counsel.

Neither the sending of this notice nor the filing of a claim is intended to mean and should not be construed to mean that any of the defendants are liable or that you will be entitled to recover any amount.

If there is no recovery on behalf of the classes, i.e., an adverse decision, there will be no liability on your part for either fees or expenses, and you will be barred from suing any of the defendants for the wrongs alleged in this suit.

The attorneys representing the classes described above are Kaplan, Kilsheimer & Foley, 122 East 42nd Street, New York, New York 10017.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

By RAYMOND F. BURGHARDT
Clerk of the Court

NOTICE TO CLASS, DATED APRIL 23, 1975,
WITH STIPULATION OF SETTLEMENT

NOTICE TO ALL PERSONS WHO DURING THE PERIOD
OCTOBER 30, 1970 THROUGH NOVEMBER 2, 1971
OWNED INTERIM CERTIFICATES REPRESENTING
SHARES OF THE COMMON STOCK OF WESTINGHOUSE
ELECTRIC CORPORATION HELD IN ESCROW AS A
RESULT OF THE MERGER OF AMERICAR, INC. AND
WESTCAR, INC.

A 24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DR. DAVID SIROTA, FRANCES NAISON, IDA SIROTA :
and JOHN P. LYCETTE, JR., :
:

Plaintiffs :

against :

: 72 Civ. 4899 (CMM)

ECONO-CAR INTERNATIONAL, INC., WESTINGHOUSE :
ELECTRIC CORPORATION, JAMES W. CROWLEY, :
BERRIEN H. BECKS, and BERRIEN H. BECKS, :
WILLIAM FRANK O'ROURKE, and FLORIDA BANK :
AND TRUST COMPANY AT DAYTONA BEACH, as :
EXECUTORS OF THE ESTATE OF GUY B. ODUM, :

Defendants :

-----X
JAMES W. CROWLEY and BERRIEN H. BECKS, :

Third-Party Plaintiffs :

against :

POWELL, GOLDSTEIN, FRAZER & MURPHY, a :
partnership, :

Third-Party Defendant :
-----X

This Notice is given to advise you that counsel for plain-
tiffs and counsel for defendants, third party plaintiffs and the
third party defendant have reached an agreement providing for set-
tlement of the above-entitled litigation. Pursuant to an order of
the Court, entered April 3, 1975, a hearing will be held in Court
Room 705 of the United States Courthouse, Foley Square, New York,
New York at 4:00 P.M. on June 16, 1975. The purpose of the hearing
is to determine (1) whether the proposed settlement is fair, reason-
able and adequate and should be approved (2) whether the Classes
should be redefined and the persons entitled to make a claim limited
to those persons who owned Interim Certificates on November 2, 1971,
(3) whether the above-entitled action, the second amended complaint
and all other claims asserted in this action should be dismissed on
the merits with prejudice, (4) whether the classes should be barred

and enjoined from the prosecution of any action insofar as it may involve the terms and conditions of the escrow agreement defined in the Stipulation of Settlement and if such settlement should be approved, what allowance should be made to plaintiffs for legal fees and expenses.

THE SETTLEMENT

The settlement provides for the payment of \$135,000 by defendants and the third party defendant and the delivery by Westinghouse Electric Corporation ("Westinghouse") of 37,728 shares of Westinghouse common stock, representing all of the shares (adjusted for a stock split) held in escrow as a result of the Americar-Westcar merger. If the price of Westinghouse common stock is less than \$8½ (eight and one-half) dollars per share at the time the Court approves this settlement, Westinghouse will pay an additional amount of cash or issue an additional number of shares, at its option, to make up this deficiency. This settlement fund, after payment of attorneys' fees and expenses, shall be divided among Interim Certificate holders who file valid claims. Defendants have agreed to bear all administration expenses in connection with this settlement. The terms of the settlement are fully described in the Stipulation of Settlement which is annexed to the copies of this Notice mailed to persons who are members of the Classes and to those persons who previously requested exclusion.

On February 7, 1974, this Court directed that this action proceed and be maintained as a class action for and on behalf of all persons who were shareholders of Americar and who received Interim Certificates representing shares of Westinghouse common stock held in escrow as a result of the Americar-Westcar merger and all persons who purchased Interim Certificates on the open market during the period October 30, 1970 through October 29, 1971. AS PART OF ITS APPROVAL OF THIS SETTLEMENT, THE COURT WILL BE ASKED TO REDEFINE THE CLASS HEREIN SO AS TO INCLUDE ALL PERSONS, EXCEPT FOR DEFENDANTS, WHO OWNED INTERIM CERTIFICATES ON OR BEFORE NOVEMBER 2, 1971. THIS SETTLEMENT, HOWEVER, PROVIDES FOR PAYMENT ONLY TO THOSE PERSONS, EXCEPT FOR DEFENDANTS, WHO OWNED INTERIM CERTIFICATES ON NOVEMBER 2, 1971.

LITIGATION

The second amended complaint in this action charges defendants with violations of the federal securities laws in connection with the proxy statement issued in connection with the Americar-Westcar merger and the establishment of an escrow under which 37,728 (18,864 pre split) shares of Westinghouse common stock, representing part of the consideration paid by Westinghouse in connection with the merger, were held in escrow to protect Westinghouse against certain liabilities and other matters. Interim Certificates representing these escrow shares were issued to Americar shareholders and for nearly one year following the merger, these certificates were traded. On October 29, 1971, Westinghouse asserted claims against the escrow which exceeded the value of the escrow thereby rendering the Interim Certificates worthless. The second amended complaint

seeks money damages for members of the class. Defendants and third-party defendant deny any wrongdoing, and no court has passed upon the merits of the claims.

THE HEARING

At the hearing the Court shall be asked to redefine the Class, approve the settlement as fair, reasonable and adequate and bar and enjoin the prosecution of any action by the classes insofar as it may involve the terms and conditions of the escrow agreement defined in the Stipulation of Settlement. If the settlement is approved, Kaplan, Kilsheimer & Foley, plaintiffs' attorneys in this action, intend to apply for attorneys' fees not to exceed \$175,000 and an allowance for expenses actually incurred in the litigation not to exceed \$4,500.

Pursuant to the Stipulation, after approval of the settlement, each claimant will be required to submit a Proof of Claim form in order to receive payment. Pursuant to a notice mailed March 1, 1974, in this action, certain persons requested exclusion from the Classes. The Stipulation of Settlement provides that such persons may participate in the settlement provided that they owned Interim Certificates on November 2, 1971.

The hearing may be adjourned by the Court from time to time by an announcement at the hearing or at any adjournment thereof without any further notice. The Court may approve the Stipulation of Settlement with modifications without requiring further notice.

At the hearing, any member of the Classes may appear and show cause why the proposed settlement should not be approved as fair, reasonable and adequate and why this action, the second amended complaint and all other claims asserted in this action, should not be dismissed on the merits with prejudice and why the classes should not be barred from suit on the escrow agreement. Any member of the class who becomes such by reason of extending the class from Oct. 29, to November 2, 1971, shall have the right to request exclusion from the class and this settlement. No papers or briefs or requests for exclusion from the class submitted by any person shall be received and considered by the Court, except by special permission of the Court, unless on or before 12:00 o'clock noon on May 31, 1975, notice of intention to appear and a statement of the basis for objection together with a memorandum of supporting authorities are filed with the Court and copies served on Kaplan, Kilsheimer & Foley 122 East 42nd Street, New York, New York 10017, Attention Robert N. Kaplan, counsel for plaintiffs and Whitman & Ransom, 522 Fifth Avenue, New York, New York 10036, Attention John M. Hadlock; Alexander & Green, 299 Park Avenue, New York, New York, 10017, Attention Donald M. Dunn; and Hart & Hume, 10 East 40th Street, New York, New York 10016, Attention Lester Esterman, counsel for defendants and third-party defendant.

INSPECTION OF PLEADINGS AND OTHER PAPERS

For a complete and detailed statement of the matters involved

in this litigation, reference is made to the proceedings and other papers which have been filed at the Office of the Clerk of the United States District Court, U.S. Court House, Foley Square, New York, New York, under file number 72 Civ. 4899 (CMM). Copies of the papers in support of the settlement and the pleadings and discovery documents in the action will be available at the offices of Kaplan, Kilsheimer & Foley, counsel for plaintiffs.

BY ORDER of the United States District Court for the Southern District of New York.

Dated: April 23, 1975

RAYMOND F. BURGHARDT, Clerk
United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DR. DAVID SIROTA, FRANCES NAISON,
IDA SIROTA and JOHN P. LYCETTE, JR.,

Plaintiffs,

- against -

ECONO-CAR INTERNATIONAL, INC.,
WESTINGHOUSE ELECTRIC CORPORATION,
JAMES W. CROWLEY, BERRIEN H. BECKS,
and BERRIEN H. BECKS, WILLIAM FRANK
O'ROURKE, and FLORIDA BANK AND TRUST
COMPANY AT DAYTONA BEACH, as EXECUTORS
OF THE ESTATE OF GUY B. ODUM,

Defendants.
-----X

72 Civ. 4899
(CMM)

STIPULATION
OF
SETTLEMENT

JAMES W. CROWLEY and BERRIEN H. BECKS,

Third-Party Plaintiffs,

- against -

POWELL, GOLDSTEIN, FRAZER & MURPHY,
a partnership,

Third-Party Defendant.
-----X

WHEREAS, the above-entitled action is pending in the United States District Court for the Southern District of New York; and

WHEREAS, this Court in an order dated February 7, 1974, directed that this action proceed and be maintained as a class action, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, for and on behalf of the following classes:

- (a) All persons who were shareholders of Americar, Inc. and who received Interim Certificates representing shares of the common stock of Westinghouse Electric Corporation held in escrow, as a result of the merger of Americar, Inc. and Westcar, Inc.
- (b) All persons who purchased Interim Certificates on the open market during the period October 30, 1970 through October 29, 1971; and

WHEREAS, members of these Classes have been duly notified of the pendency of this action and of their right to request exclusion from the Classes in accordance with this Court's order, and certain members of these Classes have requested exclusion; and

WHEREAS, the parties desire to permit persons who have previously requested exclusion to participate in the settlement as if they had not requested exclusion and were still members of the Class; and

WHEREAS, the Interim Certificates were traded in the open market for nearly one year subsequent to October 30, 1970; and

WHEREAS, the Interim Certificates were rendered worthless on November 2, 1971 by the claim of Westinghouse Electric Corporation ("Westinghouse") against the escrow; and

WHEREAS, the defendants and the third party defendant have appeared herein by their attorneys and served answers which denied any wrongdoing or liability and asserted various affirmative defenses and cross-claims; and

WHEREAS, defendants and the third party defendant continue to deny any and all wrongdoing or liability with respect to any and all of the transactions, facts or claims alleged in the second amended complaint, cross-claims and third party action, but consider it desirable and in their best interests to settle this action and the claims alleged herein to the extent, in the manner and upon the terms and conditions hereinafter set forth to avoid further expense, inconvenience and distraction and burdensome and protracted litigation and to put to rest the claims to be settled and, additionally, in the case of James W. Crowley, Berrien H. Becks and Berrien H. Becks, William Frank O'Rourke and Florida Bank and Trust Company at Daytona Beach, as Executors of and Trustees under the Will of Guy B. Odum to protect their business and professional reputations and their standing in their communities, regardless of the merits of such claims and to avoid unfavorable publicity; and

WHEREAS, the parties desire to resolve all outstanding issues and questions concerning the disposition of the Westinghouse common shares still held in escrow pursuant to the escrow agreement entered into as part of the terms of the merger of Americar, Inc. and Westcar, Inc., and all outstanding issues and questions concerning the construction and interpretation of said escrow agreement; and

WHEREAS, in connection with pre-trial discovery proceedings in this action, numerous documents have been produced, copied and examined, numerous interrogatories have been responded to and oral testimony has been taken; and

WHEREAS, plaintiffs desire to settle this action and the claims alleged herein to the extent, in the manner and upon the terms and conditions hereinafter set forth and deem such settlement desirable and in the best interests of the members of the Class;

and

WHEREAS, settlement negotiations have taken place between the parties and a settlement agreement has been reached;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the undersigned, subject to the approval of the Court, that the above-entitled action shall be settled and compromised to the extent, in the manner and upon the terms and conditions hereinafter set forth:

1. For the purposes of this Stipulation, the following terms shall have the following meanings:

(a) "Settlement Date" means the date of this Stipulation of Settlement.

(b) "Approval Date" means the date of entry of a final judgment herein, which judgment approves this Stipulation and dismisses this action, cross-claims and the third party action on the merits and with prejudice to plaintiffs, the Class, cross-claimants and third party plaintiffs as against defendants and third party defendant.

(c) "Effective Date" means the day upon which the time to appeal from the entry of a final judgment herein (which judgment approves this Stipulation and dismisses this action on the merits and with prejudice to the plaintiffs and the class, cross-claimants and third party plaintiffs as against all defendants and the third party defendant) shall have expired, no appeal having been taken therefrom within the time limited therefor, or if any appeal shall have been taken from said final judgment within the time limited therefor, then on the day on which any and all such appeals shall have been finally determined by the Court of last resort or finally dismissed or disposed of in such manner as to give full force and effect to said final judgment.

(d) "Claimants" means all persons, except for defendants herein, who owned Westinghouse Interim Certificates on November 2, 1971 and their successors, i.e., executor, administrator, trustee, heir, beneficiary or assignee by operation of law.

(e) "Interim Certificates" refers to Interim Certificates representing shares of common stock of Westinghouse Electric Corporation ("Westinghouse") held in escrow as a result of the merger of Americar, Inc. into Westcar, Inc. which became effective on October 30, 1970.

(f) "Proof of Claim" means a form to be distributed to Claimants as described in paragraph 6 hereof.

(g) "Settled Claims" means all claims asserted or which could have been asserted by members of the Class with regard to the facts alleged, or transactions referred to, in the complaint and amended complaints in this action.

(h) "Administration Expenses" means all postage, printing, publication and handling charges and other out-of-pocket expenses incurred or to be incurred in connection with this Stipulation of Settlement, the proofs of claim and the distribution hereunder.

(i) "Attorneys' Fees" means any allowance by the Court for fees and expenses of the attorneys for plaintiffs in the prosecution and settlement of this action.

(j) "Class" means

(i) All persons who were shareholders of Americar, Inc. and who received Interim Certificates representing shares of the common stock of Westinghouse Electric Corporation held in escrow as a result of the merger of Americar, Inc. and Westcar, Inc.

(ii) All persons who purchased Interim Certificates on the open market during the period October 30, 1970 through November 2, 1971.

(k) "Escrow Agreement" means the agreement annexed to the proxy statement of Americar, Inc., dated October 9, 1970.

(l) "Escrow Agent" refers to Northern Trust Company of Chicago, acting as escrow and/or transfer agent.

2. The settlement fund from which payment to the Claimants and Attorneys' Fees shall be paid shall be comprised of the following:

(a) Within five (5) days of the approval date defendant Westinghouse shall deliver to the escrow agent 37,728 shares of Westinghouse common stock, which represent all of the Westinghouse shares held in escrow as a result of the merger of Americar, Inc. and Westcar, Inc. (adjusted for a subsequent stock split) to the Escrow Agent. Westinghouse shall also deliver to the Escrow Agent all dividends pertaining to these shares declared after March 31, 1975 and all such dividends shall be delivered on the dividend payment date to the Escrow Agent who shall place the dividends in an interest bearing account or certificate of deposit and all interest so earned shall be added to the Settlement Fund. Westinghouse hereby agrees to guarantee that the mean between the high and low prices of Westinghouse common stock on the New York Stock Exchange for the Approval Date ("mean value") shall be at least \$8½ (eight and one-half) dollars per share. If the mean value of Westinghouse common stock is less than \$8½ per share and, consequently, the mean value of the 37,728 shares of Westinghouse common stock to be delivered by Westinghouse is less than \$320,688.00, Westinghouse shall within twenty (20) days of the Approval Date, add to the 37,728 shares, cash or Westinghouse common stock, calculated as of the Approval Date, sufficient to make the mean value of the 37,728 shares of Westinghouse common stock plus the additional

cash or Westinghouse common stock, worth together \$320,688.00. Any cash payment so made by Westinghouse shall be transmitted within twenty (20) days following the Approval Date to the Escrow Agent, who shall place the cash payment in an interest bearing account or certificate of deposit, and the principal amount of cash and all interest earned thereon shall be added to the Settlement Fund. Any additional stock to be so delivered by Westinghouse shall be valued according to the mean value of Westinghouse common stock on the New York Stock Exchange, as set forth above. These additional shares shall be delivered by Westinghouse within twenty (20) days following the Approval Date to the Escrow Agent and these additional shares and all dividends declared on these shares after the Approval Date shall be held and shall be added to the Settlement Fund. The Escrow Agent shall place all of these dividends in an interest bearing account or certificate of deposit and all interest earned thereon shall be added to the Settlement Fund.

(b) The Representatives of the stockholders of American, Inc. under the Escrow Agreement have made and will deliver on the Approval Date to the Continental Illinois National Bank and Trust Company of Chicago, presently the holder of 8,496 shares of the common stock of Westinghouse and dividends and interest thereon which on March 14, 1975, amounted to \$29,217.21 still held in escrow under said Escrow Agreement, their written consent provided for in Clause A of the second paragraph of paragraph 3 of the Escrow Agreement thus consenting to the delivery and transfer of the said shares and the dividends and interest thereon, to Westinghouse.

(c) Defendants James W. Crowley ("Crowley") and Berrien H. Becks ("Becks") shall pay or cause to be paid the sum of \$67,500.00. Third party defendant Powell, Goldstein, Frazer & Murphy ("Powell, Goldstein") shall pay or cause to be paid the sum of \$67,500.00. These sums to be paid or caused to be paid by these defendants shall be paid within five (5) days of the Approval Date to the Escrow Agent which will place these amounts in an interest bearing account or certificate of deposit. All interest earned on these principal amounts while held by the Escrow Agent shall accrue to the benefit of the Settlement Fund.

3. (a) Ten (10) days after the Effective Date, the Escrow Agent shall pay out of the Settlement Fund the Attorneys' Fees awarded to plaintiffs' attorneys by the Court in the manner directed by the Court.

4. If this Stipulation is approved by the Court, a judgment shall be entered as follows:

(a) Approving this Stipulation, adjudging the terms thereof to be fair, adequate and reasonable, and directing the consummation of its terms and provisions.

(b) Redefining the Class as

(i) All persons who were shareholders of Americar, Inc. and who received Interim Certificates representing shares of common stock of Westinghouse Electric Corporation held in escrow as a result of the merger of Americar, Inc. and Westcar, Inc.

(ii) All persons who purchased Interim Certificates on the open market during the period October 30, 1970 through November 2, 1971.

(c) Dismissing the Settled Claims in this action and the second amended complaint therein on the merits with prejudice to the plaintiffs and all other members of the Class. Dismissing all claims, cross-claims and third party claims asserted in any pleading filed by any defendant or third party plaintiff in this action on the merits and with prejudice.

(d) Barring and enjoining prosecution of all other actions insofar as they involve the Settled Claims dismissed hereby.

(e) Barring and enjoining the prosecution of any action or proceeding by or against the parties (including all class members) to this suit and the parties to the Escrow Agreement insofar as it may involve the said Escrow Agreement, including any action under the Escrow Agreement against the Representatives of the stockholders of Americar, Inc., Continental Illinois National Bank and Trust Company of Chicago, Econo-car International, Inc., and Westinghouse.

(f) Reserving jurisdiction over the effectuation of the settlement and compromise provided for herein.

5. The attorneys for the parties hereto shall promptly submit this Stipulation to the Court for approval upon such notice to be given to the members of the Class as the Court may direct, and pending determination by the Court, all further proceedings in this action shall be held in abeyance.

6. Within twenty (20) days after the Effective Date hereof, defendants shall cause to be mailed Proof of Claim forms (in the form annexed hereto as Exhibit A) to claimants. Within thirty (30) days after the Effective Date hereof, defendants shall cause to be published one time in the national edition of the Wall Street Journal a notice substantially in the form annexed hereto as Exhibit B.

7. For purposes of determining the extent, if any, to which any person shall be entitled to be treated as a Claimant pursuant to this Stipulation, the following conditions shall apply:

(a) Each Claimant desiring to participate in the settlement shall be required to submit a Proof of Claim.

(b) All Proofs of Claim must be submitted within forty-five (45) days after the mailing required by paragraph 6 above or sixty-five (65) days after the Effective Date, whichever shall be

later, unless such period is extended by court order after due notice to all parties. Any claimant who fails to submit a Proof of Claim within such period shall be forever barred from receiving any payment pursuant to this Stipulation. A Proof of Claim shall be deemed to be submitted when posted if it is mailed by registered or certified mail, return receipt requested, postage prepaid, addressed in accordance with the instructions given therein. Proofs of Claim submitted otherwise shall be deemed to be submitted at the time they are actually received by the person or office designated in the form to receive them.

(c) Each person submitting a Proof of Claim hereunder shall be required to submit to the jurisdiction of this Court with respect to his claim.

(d) Within thirty (30) days after the date by which Proofs of Claim are required to be filed pursuant to subparagraph (b) above, unless further extended by the Court, the party rejecting a claim shall notify in writing all persons whose Proof of Claim that party has decided to reject in whole or in part, setting forth the reasons therefor and shall indicate in such notice that the person whose claim is rejected has the right to a hearing before the Court, if he so desires and complies with the requirements of subparagraph (e) below. A copy of such notice shall be filed with the Clerk of this Court.

(e) If any person whose claim has been rejected in whole or in part desires to contest such rejection, he shall within twenty (20) days after receipt of the notice required in subparagraph (d) above, serve upon the attorneys for the parties and file with the Court a notice indicating his intention to contest the rejection and requesting a hearing thereon before the Court.

(f) The administration of this settlement and decision of all controversies relating thereto, including disputed questions of law and fact, with respect to the validity of claims shall be subject to the jurisdiction and authority of the Court.

8. (a) If none of the claims filed is rejected, the parties shall calculate the pro rata portion of the remaining settlement fund to be paid to the claimants and shall enter into a stipulation setting forth the names of the claimants and the amount to be paid to each claimant. This stipulation shall be submitted to the court for approval. Within thirty (30) days after the court approves the stipulation, payment shall be made to the claimants in accordance with the aforesaid stipulation. If any of the claims submitted is rejected, calculations shall be made as to claimants whose proofs of claim have not been rejected or have been approved by the court, after all disputed claims are resolved by the court or the parties, or after the time has elapsed for a claimant whose claim has been rejected to file a request for a hearing without such a request for a hearing being filed, or at such time as the court may order. Before any payment shall be made, however, the parties shall calculate the pro rata portion of the remaining settlement fund to be paid to the claimants and shall enter into a

stipulation as provided above to be submitted to the court for approval. Payments shall be made to claimants within thirty (30) days after the court approves the aforesaid stipulation.

(b) The Escrow Agent shall pay or cause to be paid to each claimant whose Proof of Claim is determined to be valid, his proportionate share of the Settlement Fund (remaining after payment of Attorneys' Fees) ("Remaining Settlement Fund"). Subject to the provisions of subparagraph (c) of this paragraph, each Claimant's proportionate share of the Remaining Settlement Fund shall be the percentage of the Remaining Settlement Fund which the number of Westinghouse common shares represented by his Interim Certificate or Certificates (as adjusted) bears to the total number of Westinghouse common shares (as adjusted) covered by submitted claims which have not been finally rejected.

(c) Any delivery of shares out of the Remaining Settlement Fund to Claimants by the Escrow Agent shall be of full shares only and the Escrow Agent shall have no authority to issue fractional shares. The Escrow Agent shall sell the number of shares held in the Remaining Settlement Fund equal to the aggregate of all fractions that Claimants shall be entitled to and shall distribute full shares plus cash for fractional shares to each claimant. For purposes of determining the value of fractional shares, each Claimant shall be entitled to the appropriate portion of the cash actually received upon the sale of the shares held in the Remaining Settlement Fund, without regard to costs or expenses incurred in connection with the sale, which costs and expenses shall be an Administration Expense. The date of said sale shall be solely at the discretion of the Escrow Agent.

9. Defendants and third-party defendant shall bear the cost of all Administration Expenses incurred in connection with this Settlement.

10. It is expressly understood that this Stipulation and any proceeding in connection therewith are not and shall not be construed or invoked by any person as an admission by defendants or third party defendant or any of them of any liability or wrongdoing with respect to any of the allegations in the complaint, amended complaints or third party complaint herein, and in no event shall this Stipulation or any proceeding taken thereunder or any fact referred to in such proceeding be considered or used as evidence in any proceeding except one to enforce this Stipulation.

11. If the Court does not approve this Stipulation, or if the judgment of approval is reversed on appeal, then this Stipulation shall become null and void without further act by any party and all stock and cash issued or paid by Westinghouse, including all dividends and interest thereon, shall be returned to Westinghouse and all cash payments made by Crowley, Becks and Powell Goldstein, including all interest earned thereon, shall be returned to Alexander & Green as attorneys for Crowley and Becks and to Hart & Hume, as attorneys for Powell Goldstein, pro rata.

Dated: New York, New York
March 31, 1975

KAPLAN, KILSHEIMER & FOLEY

By /s/ Robert N. Kaplan
122 East 42nd Street
New York, New York 10017
Attorneys for Plaintiffs

WHITMAN & RANSOM

By /s/ John M. Hadlock
522 Fifth Avenue
New York, New York 10036
Attorneys for Defendants:
Westinghouse Electric
Corporation and Econo-Car
International, Inc.

ALEXANDER & GREEN

By /s/ Donald M. Dunn
299 Park Avenue
New York, New York 10017
Attorneys for Defendants and
Third-Party Plaintiffs
Crowley & Becks and Berrien H.
Becks, William Frank O'Rourke
and Florida Bank and Trust
Company as the Executors of the
Will of Guy B. Odum and Trustees
under said Will.

HART & HUME

By /s/ Lester Esterman
10 East 40th Street
New York, New York 10016
Attorneys for Powell, Goldstein,
Frazer & Murphy, Third-Party
Defendants

EXCERPT FROM PLAINTIFFS' MEMORANDUM IN
SUPPORT OF PROPOSED SETTLEMENT

Metzner, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. DAVID SIROTA, FRANCES NAISON,
IDA SIROTA and JOHN P. LYCETTE, JR.,

Plaintiffs,

-against-

ECONO-CAR INTERNATIONAL, INC.,
WESTINGHOUSE ELECTRIC CORPORATION,
JAMES W. CROWLEY, BERRIEN H. BECKS,
and BERRIEN H. BECKS, WILLIAM FRANK
O'ROURKE, and FLORIDA BANK AND TRUST
COMPANY AT DAYTONA BEACH, as EXECUTORS
OF THE ESTATE OF GUY B. ODUM,

Defendants.



72 Civ. 4899
(CMM)

JAMES W. CROWLEY and BERRIEN H. BECKS,

Third-Party Plaintiffs,

-against-

POWELL, GOLDSTEIN, FRAZER & MURPHY,
a partnership,

Third-Party Defendants.

PLAINTIFFS' MEMORANDUM IN SUPPORT
OF PROPOSED SETTLEMENT

Of Counsel:

Robert N. Kaplan
James B. Kilsheimer III
Ronald Litowitz

KAPLAN KILSHEIMER & FOLEY
122 EAST 42ND STREET
NEW YORK, N.Y. 10017

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

DR. DAVID SIROTA, FRANCES NAISON, :
IDA SIROTA and JOHN P. LYCETTE, JR., :

Plaintiffs, :

-against- :

ECONO-CAR INTERNATIONAL, INC., :
WESTINGHOUSE ELECTRIC CORPORATION, :
JAMES W. CROWLEY, BERRIEN H. BECKS, :
and BERRIEN H. BECKS, WILLIAM FRANK :
O'ROURKE, and FLORIDA BANK AND TRUST :
COMPANY AT DAYTONA BEACH, as EXECUTORS :
OF THE ESTATE OF GUY B. ODUM, :

Defendants. :

-----x

72 Civ. 4899
(CMM)

JAMES W. CROWLEY and BERRIEN H. BECKS, :

Third-Party Plaintiffs, :

-against- :

POWELL, GOLDSTEIN, FRAZER & MURPHY, :
a partnership, :

Third-Party Defendant. :

-----x

PLAINTIFFS' MEMORANDUM IN SUPPORT
OF PROPOSED SETTLEMENT

Plaintiffs submit this memorandum in support of
the application for approval of the proposed settlement,
pursuant to Rule 23 of the Federal Rules of Civil Procedure

On April 3, 1975, the Court signed an order

setting the hearing for June 16, 1975. Pursuant to the Court's Order, the requisite Notice has been mailed to over 2,000 holders of interim certificates and a notice has been published in the national edition of the Wall Street Journal. No class member has interposed an objection to the settlement as of the filing of this brief.*

The settlement provides for benefits to class members in excess of \$750,000. This memorandum will demonstrate that the proposed settlement is fair and should be approved.

NATURE OF THE ACTION

This is a class action brought on behalf of holders of Interim Certificates, representing shares of the common stock of Westinghouse Electric Corporation ("Westinghouse") held in escrow in connection with the merger of Americar, Inc. and Westcar, Inc., a wholly-owned subsidiary of Westinghouse.

The complaint and amended complaint in this action charge defendants with violations of the federal securities laws in connection with the proxy statement

* The Court's Order gives class members until May 31, 1975 to file objections.

issued in connection with the Americar-Westcar merger and the establishment of an escrow under which 37,728 (18,864 pre split) shares of Westinghouse common stock, representing part of the consideration paid by Westinghouse in connection with the merger, were held in escrow to protect Westinghouse against certain liabilities and other matters. Interim Certificates representing these escrow shares were issued to Americar shareholders and for nearly one year following the merger, these certificates were traded. On October 29, 1971, Westinghouse asserted claims against the escrow which exceeded the value of the escrow thereby rendering the Interim Certificates worthless. In essence, plaintiffs allege that the proxy statement issued in connection with the merger failed to set forth adequately the reasons for and likelihood that Westinghouse would make a claim against the escrow.

Plaintiffs Dr. David Sirota, Frances Naison and Ida Sirota were shareholders of Americar and, at the time of the merger, received Interim Certificates. Plaintiff, John P. Lycette, Jr. was not an Americar shareholder, but purchased Interim Certificates on the open market after the merger.

Defendants James W. Crowley, Berrien H. Becks, and Guy B. Odum (whose personal representatives were sued) were directors of Americar. Crowley was also pres-

ident and chief executive officer and Becks was a vice president of Americar. These three individuals were the principal shareholders of Americar and received Interim Certificates at the time of the Westinghouse-Americar merger. They were added as defendants after it was discovered, during pretrial discovery, that they had sold virtually all of their Interim Certificates on the open market after the merger.

After plaintiffs named Crowley, Becks and the Odum Estate as defendants, these defendants filed a Third Party Complaint against Powell, Goldstein, Frazer and Murphy, the law firm which had represented Americar at the time of the merger. Westinghouse also filed a cross-claim against Crowley and Becks.

The Sirotas and Frances Naison brought this action as a class action on behalf of themselves and all Americar shareholders who received Interim Certificates at the time of the merger. Later, the Complaint was amended and plaintiff Lycette was added as a representative of those persons who purchased Interim Certificates on the open market following the merger.

On February 7, 1974, the Court filed an Order declaring this to be a class action, and defining the classes as follows:

(a) All persons who were shareholders of Ameri-

car, Inc. and who received Interim Certificates representing shares of the common stock of Westinghouse Electric Corporation held in escrow, as a result of the merger of Americar, Inc. and Westcar, Inc.

- (b) All persons who purchased Interim Certificates on the open market during the period October 30, 1970 through October 29, 1971.

As part of this settlement, the Court is being asked to expand the classes so as to include persons who acquired Interim Certificates through November 2, 1971. This requested extension is due to the fact that even though Westinghouse made its claim against the escrow on October 29, 1971, the news did not become completely disseminated until November 2. The release was issued in Chicago late in the day of Friday, October 29. On Monday, November 1, there was some trading of interim certificates in New York, apparently at prices which reflect a lack of knowledge of the Westinghouse claim. Since Westinghouse's claim exceeded the value of the escrow, the claim effectively, rendered the interim certificates worthless. Since plaintiffs are suing for the value of the interim certificates (plus interest and/or dividends) based upon the alleged misleading nature of the proxy statement, persons who sold interim certificates prior to November 2, 1971, under the aegis of the alleged misleading proxy statement, received substantial value for their certificates based upon the expectation that Westinghouse would not assert a claim against the

escrow. Therefore, it is questionable whether persons who sold interim certificates prior to November 2, 1971 suffered any damages. In fact, they were beneficiaries of the alleged nondisclosures. However, persons who held interim certificates on November 2, 1971, by which date the certificates had clearly been rendered worthless, suffered damages. Consequently, the settlement provides that only persons who held interim certificates on November 2, 1971 may participate in the settlement.

PROCEEDINGS HEREIN

This action has been pending since November 1972. As appears in detail from the affidavit of Robert N. Kaplan in support of plaintiffs' fee application, plaintiffs have conducted extensive discovery proceedings through interrogatories and the examination of many thousands of pages of documents. Depositions were taken of 12 individuals, the transcripts of which total more than 1,350 pages.

THE SETTLEMENT

Settlement discussions between plaintiffs' and defense counsel extended over many months and dozens of negotiating sessions, both in person and by telephone. They involved lengthy talks and hard bargaining, in which the full development of the issues by extensive discovery,

ORDER AND JUDGMENT, DATED JULY 15, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 44

-----x
DR. DAVID SIROTA, FRANCES NAISON,
IDA SIROTA and JOHN P. LYCETTE,
JR.,

Plaintiffs,

-against-

ECONO-CAR INTERNATIONAL, INC.
WESTINGHOUSE ELECTRIC CORPORATION,
JAMES W. CROWLEY, BERRIEN H. BECKS
and BERRIEN H. BECKS, WILLIAM FRANK
O'ROURKE, and FLORIDA BANK AND TRUST
COMPANY AT DAYTONA BEACH, as
EXECUTORS OF THE ESTATE OF GUY B.
ODUM,

Defendants.

-----x
JAMES W. CROWLEY and BERRIEN H.
BECKS,

Third-Party Plaintiffs,

-against-

POWELL, GOLDSTEIN, FRAZER &
MURPHY, a partnership,

Third-Party Defendant.
-----x

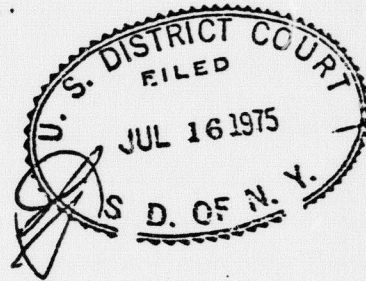
ORDER AND
JUDGMENT

72 Civil 4899-(C.M.M.)

It appearing to the Court that:

1. This Court in an order dated February ,
1974 directed that this action proceed and be maintained
as a class action, pursuant to Rule 23(b)(3) of the Federal
Rules of Civil Procedure, for and on behalf of the following
classes:

- (a) All persons who were shareholders of Americar, Inc. and who received Interim Certificates representing shares of the common stock of Westinghouse Electric Corporation held in escrow, as a result of the merger of Americar, Inc. and Westcar, Inc.
- (b) All persons who purchased Interim Certificates on the open market during the period October 30,



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1970 through October 29, 1971;

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2. The parties to this class action have submitted to the Court for its approval, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a Stipulation of Settlement dated March 31, 1975 (the "Stipulation of Settlement");

3. This Court made and entered its order dated April 3, 1975, directing that a hearing be held on June 16, 1975 (i) to determine whether the Stipulation of Settlement is fair, reasonable and adequate and should be approved, (ii) directing the consummation of the aforesaid Stipulation of Settlement in accordance with its terms, including the redefinition of the Classes herein and the limitation of the persons entitled to make claim to those persons, except for defendants herein, who owned Interim Certificates as of November 2, 1971; (iii) if the Stipulation of Settlement is approved reserving jurisdiction over the consummation of the Stipulation of Settlement and the award to be made to the plaintiffs and their counsel of their litigation expenses, including reasonable attorneys' fees, and expenses payable from the Settlement Fund as set forth in the Stipulation of Settlement;

4. Notice of said hearing has been given to the members of the classes, pursuant to Rule 23(e) of the Federal Rule of Civil Procedure, by mailing a copy of the Notice to shareholders postage prepaid on April 28, 1975 to each person who owned Interim Certificates during the period October 30, 1970 through November 2, 1971 at his address of record and by causing a notice of the hearing to be published in the national edition of the Wall Street Journal on May 16, 1975;

5. The mailing of said Notice to members of the classes and the publication of the notice in the national edition of the Wall Street Journal were in accordance with this Court's Order, dated April 3, 1975, and constituted compliance with the requirements of Rule 23(e) of the Federal Rules of Civil Procedure;

6. No objection to the Stipulation of Settlement has been made;

7. The Court has considered the application of Messrs. Kaplan, Kilsheimer & Foley, counsel for plaintiffs, for the allowance to them as counsel for the plaintiffs for fees and disbursements.

8. The Court heard counsel for the respective parties, all in support of the proposed settlement, at the hearing on June 16, 1975 and no one appeared in opposition to either the settlement or fee application of counsel for plaintiffs; and the Court has considered the matters involved and has filed its opinion dated June 24, 1975 finding the proposed settlement to be fair and equitable and granting the application for allowance of a fee to plaintiffs' counsel.

NOW, THEREFORE, upon all of the pleadings, depositions, and documents on file in this action, and after having received and studied the briefs of the proponents of the settlement and having heard oral argument in support of the fairness, reasonableness and adequacy of the settlement by counsel for the parties

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

(a) The Stipulation of Settlement dated March 31, 1975 is fair, and it is directed that the settlement shall be consummated in accordance with the terms of the Stipulation of Settlement;

(b) The classes herein are hereby redefined to include

(i) All persons who were shareholders of Americar, Inc. and who received Interim Certificates representing shares of common stock of Westinghouse Electric Corporation held in escrow as a result of the merger of Americar, Inc. and Westcar, Inc.

(ii) All persons who purchased Interim Certificates on the open market during the period October 30, 1970 through November 2, 1971;

(c) The persons who are entitled to make claims under the Stipulation of Settlement are limited to those persons, except for defendants herein, who owned Interim Certificates as of November 2, 1971;

(d) This action and all claims asserted in or which could have been asserted by plaintiffs or members of the classes with regard to any of the facts alleged or transactions referred to in the complaint and amended complaints in this action be and the same hereby are dismissed on the merits and with prejudice as to each plaintiff and member of the classes and all of them and in favor of each and all of the defendants named in the complaint and amended complaints in this action, without costs to any party, and all claims, cross-claims and third party claims asserted in any pleading filed by any defendant or third party plaintiff in this action be and the same are hereby dismissed on the merits with prejudice, without costs to any party;

(e) All other actions based upon claims asserted or which could have been asserted herein by plaintiffs or members of the classes with regard to the facts alleged, or transactions referred to, in the complaint and amended complaints in this action be and the same hereby are barred and the prosecution thereof are

hereby enjoined;

(f) All actions or proceedings by or against the parties (including all class members) to this suit and the parties to the Escrow Agreement, annexed to the proxy statement of Americar, Inc. dated October 9, 1970 ("Escrow Agreement") insofar as it may involve the said Escrow Agreement, including any action under the Escrow Agreement against the Representatives of the stockholders of Americar, Inc., Continental Illinois National Bank and Trust Company of Chicago, Econo-Car International, Inc., and Westinghouse Electric Corporation be and same hereby are barred and the prosecution thereof are hereby enjoined;

(g) Kaplan, Kilsheimer & Foley, attorneys for plaintiffs are allowed attorneys fees of \$155,000.00 to be paid as follows: \$31,000 in cash and the balance by transfer to said attorneys of 7750 shares of Westinghouse Electric Corporation common stock from the shares delivered pursuant to the Stipulation of Settlement, plus costs and disbursements of \$3,499.93. Northern Trust Company of Chicago, as escrow agent is hereby directed to pay and transfer said cash and stock to Kaplan, Kilsheimer & Foley ten (10) days after the Effective Date as defined in the Stipulation of Settlement; and

(h) Jurisdiction over the consummation of this settlement and the award to the plaintiffs and their counsel their litigation expenses, including reasonable attorneys' fees and expenses, payable from the Settlement Fund, be and the same hereby is reserved.

Dated: New York, New York
July 15, 1975

Judgment entered: - 7/17/75 -

Charles M. Metzner
Charles M. Metzner, U.S.D.J.

7/17/75

Raymond F. Burghardt
CLERK

AFFIDAVIT OF SERVICE

A 49

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

PATRICIA KINSELLA, being duly sworn, deposes and says,
that deponent is not a party to the action, is over 18 years of
age and resides at Forest Hills, New York.

That on the 26th day of June, 1975, deponent served the
within Notice of Settlement upon:

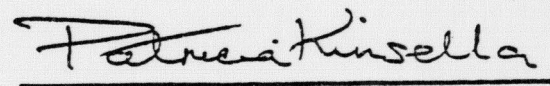
ALEXANDER & GREEN
Attorneys for Defendants-
Third-Party Plaintiffs
James W. Crowley and
Berrien H. Becks
299 Park Avenue
New York, N. Y. 10017

HART & HUME
Attorneys for Third-Party Def't.
Powell, Goldstein, Frazer & Murphy
10 East 40th Street
New York, N. Y.

WHITMAN & RANSOM
Attorneys for Defendants
Westinghouse Electric Corporation and
Econo-Car International, Inc.
522 Fifth Avenue
New York, N. Y.

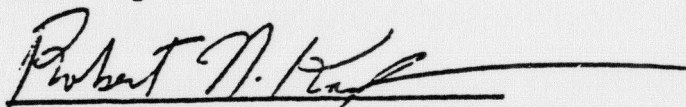
NORMAN G. SADE
Porzio, Bromberg & Newman
Attorneys for Defendants
Westinghouse Elec. Corp. and
Econo-Car International, Inc.
One Washington Street
Morristown, New Jersey 07960

in this action, at their respective addresses designated by said
attorneys for that purpose, by depositing a true copy of same
enclosed in a postpaid properly addressed wrapper, in an official
depository under the exclusive care and custody of the United
States Postal Service within the State of New York.


PATRICIA KINSELLA

Sworn to before me this

26th day of June, 1975.



- ROBERT N. KAPLAN
Notary Public, State of New York
No. 60-2033135
Qualified in Westchester County
Commission Expires March 30, 1977

DECISION DATED JUNE 24, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
DR. DAVID SIROTA, FRANCES NAISON,
IDA SIROTA and JOHN P. LYCETTE,
JR.,

Plaintiffs,

-against-

ECONO-CAR INTERNATIONAL, INC.,
et al.,

Defendants.

----- x
JAMES W. CROWLEY and BERRIEN H.
BECKS,

Third-Party Plaintiffs,

-against-

POWELL, GOLDSTEIN, FRAZER & MURPHY,
a partnership,

Third-Party Defendant.

----- x
METZNER, D. J.:

On June 16, 1975, a hearing was held pursuant to Rule 23 of the Federal Rules of Civil Procedure, to determine whether the proposed settlement of this action is fair, reasonable and equitable, and to determine the amount of the award to be made to counsel for the plaintiffs. Notice of the hearing was given by mail in

JUN 21 3 24 PM '75
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

#42657

72 Civ. 4899

MICROFILM

JUN 24 1975

April to all members of the class and, in addition, notice was published in the Wall Street Journal.

No stockholder filed any objection either to the proposed settlement or the counsel fees requested by the attorneys for the plaintiffs. Neither did anyone appear on the hearing for that purpose.

This class action was brought pursuant to Sections 10(b) and 14(a) of the Securities Exchange Act of 1934. On October 30, 1970, Westinghouse Electric Corporation merged Americar into its wholly owned subsidiary, Westcar, Inc. In conjunction with that merger, a proxy statement was issued to the stockholders of Americar which, it is claimed, was false and misleading in a number of respects.

Pursuant to the merger proposal, 37,728 shares of Westinghouse common stock were placed in escrow to indemnify Westinghouse for unforeseen liabilities of Americar that might later be determined. The escrow was to last for one year. At the end of that time Westinghouse claimed the entire escrow because Americar's liabilities not previously known greatly exceeded the value of the shares.

In the latter part of December 1974, it was preliminarily agreed that Westinghouse would settle the claim against it by returning the 37,723 shares and that several of the individual defendants would make a cash contribution of \$135,000. At the time the shares were selling on the open market at about \$10 a share. The settlement was valued at about \$500,000. Subsequently, the value of the shares have risen on the New York Stock Exchange to a point where today they are worth about \$16 a share. In addition, a cash dividend was paid on the shares amounting to \$9,178 which was to be included in the settlement. Consequently, as of today, the value of the settlement is \$747,826, consisting of the 37,728 shares at \$16 a share, or \$603,648; a dividend of \$9,178, and other cash in the amount of \$135,000.

Obviously, with the passage of time, there has been a windfall to the plaintiffs by the more than fifty per cent increase in the value of the shares of Westinghouse. On the other hand, it may be said that the value is not important since they are returning to the escrow account what it is claimed they had improperly taken, to wit, 37,728 shares.

The court is fully cognizant of the fact that the value of the shares was much higher in 1970 through 1972, when this action was commenced. However, it cannot be assumed that each stockholder would have sold his stock at that time. In addition, there are serious questions relating to recovery of damages which seriously dilute the availability of the former high prices as a measuring rod for maximum recovery.

Under all the circumstances, I find that the proposed settlement is fair and equitable, not only when you view the settlement against the claims made, but also from the fact that no stockholder has appeared in opposition to the settlement.

Counsel has requested a fee of \$175,000 plus expenses of \$3,499.93. I have carefully reviewed the affidavit of services rendered by counsel. After giving full effect to the indicia set forth by the Court of Appeals in City of Detroit v. Grinnell, 495 F.2d 448, 470 (2d Cir. 1974), I find that a counsel fee in the amount of \$155,000 is fair and adequate under all the circumstances. It must be remembered that part of the value of the settlement was due to the economic forces

which have brought an increase in the value of all stocks on the stock exchange, and not to the efforts of counsel.

This fee should be pro rated with 80 per cent allocable to the stock valued at \$16 per share, and the balance from the cash presently on hand.

The amount of \$3,499.93 requested for expenses is approved.

Settle judgment accordingly.

Dated: New York, N.Y.
June 24, 1975

Charles M. Metzger
U. S. D. J.

AFFIDAVIT OF STUART L. SINDELL, DATED MARCH 5, 1976,
WITH EXHIBITS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
DR. DAVID SIROTA, FRANCES NAISON, IDA SIROTA :
and JOHN P. LYCETTE, JR., :

Plaintiffs, :

-against-

72 Civ. 4899
(CMM)

ECONO-CAR INTERNATIONAL, INC., WESTINGHOUSE
ELECTRIC CORPORATION, JAMES W. CROWLEY,
BERRIEN H. BECKS, and BERRIEN H. BECKS,
WILLIAM FRANK O'ROURKE, and FLORIDA BANK
AND TRUST COMPANY AT DAYTONA BEACH, as
EXECUTORS OF THE ESTATE OF GUY B. ODUM. :

AFFIDAVIT

Defendants. : *M*

-----x
JAMES W. CROWLEY and BERRIEN H. BECKS, :

Third-Party Plaintiffs, :

-against-

POWELL, GOLDSTEIN, FRAZER & MURPHY, a
partnership, :

Third-Party Defendant. :

-----x
STATE OF NEW YORK)
: ss.
COUNTY OF NEW YORK)

STUART L. SINDELL, being duly sworn, deposes
and says:

1. I make this Affidavit on behalf of Abraham
& Co. Inc. ("Abraham"), by which I was employed as Vice
President and Legal Officer at the time of the transac-
tions herein described. I am fully familiar with all the
facts and circumstances hereinafter set forth.

2. Abraham, as a shareholder of Americar, Inc.
("Americar") at the time of Americar's acquisition on

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U.S. DISTRICT COURT
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S.D. OF N.Y.

October 30, 1970 by Westcar, Inc. ("Westcar"), a subsidiary of Westinghouse Electric Corporation ("Westinghouse"), received certain Westinghouse Interim Certificates (the "Certificates") issued to all American shareholders in connection with the acquisition transaction. After the acquisition, Abraham purchased additional Certificates in the open market, and with its last purchase on August 31, 1971, it held a total of 1212 Certificates (taking into account those issued in connection with the two for one split effected November 29, 1971, as directed in the Proof of Claim Instructions).

3. This Affidavit is submitted in support of Abraham's claim that on November 2, 1971, it was the owner of 1212 Certificates, and that it is, therefore, entitled to a proportionate share of the Settlement Fund created pursuant to the order of this Court, dated July 15, 1975, and the judgment herein, dated July 17, 1975.

4. I understand that Satnick-Jaffa, Inc. ("Satinick") and Spingarn & Co., Inc. ("Spingarn") claim that as of November 2, 1971 they owned these same Certificates, divided as follows: 812 Certificates claimed by Satnick and 400 claimed by Spingarn. As more fully set forth below, it is respectfully submitted that (1) Abraham remained the owner of the Certificates in question until February 1973, (2) that Satnick and Spingarn acquired ownership of the Certificates in February, 1973, pursuant to the terms of Stipulation of Settlement, dated February 5, 1973, entered into by and between Abraham, Satnick and Spingarn (the "Stipulation"), (3) that because Satnick

and Spingarn purchased the Certificates after November 2, 1971, they are not proper members of the Class entitled to participate in a distribution of the Settlement Fund created herein, and (4) that Abraham is entitled to its proportionate share of the Settlement Fund.

5. The Stipulation, a copy of which is annexed hereto as Exhibit A, was entered into to settle a dispute then pending before the National Association of Securities Dealers, Inc. ("NASD"), which dispute arose out of an unconsummated transaction involving the Certificates. To put the Stipulation in context, a brief outline is required of what transpired between the parties in November, 1971. I am obliged to inform the Court that this outline is not designed to raise issues as to the liabilities of any party arising out of the unconsummated November 1971 transaction, for in the Stipulation (Section 11) the parties agreed that such issues should never again be raised. I shall, therefore, attempt to recount the events in neutral terms purely to establish a context for the Stipulation.

6. On November 1, 1971, Abraham authorized a brokerage firm, Brukenfeld, Mitchell & Co., ("Brukenfeld") to sell 606 Certificates (before the 2-for-1 split) on Abraham's behalf in the over-the-counter market. Abraham was advised that in telephone conversations conducted around 10:00 A.M. on November 1, 1971, Satnick and Spingarn agreed to purchase the Certificates from Brukenfeld at a price of \$65 per Certificate. Shortly thereafter, that same morning, Satnick and/or Spingarn called Brukenfeld, cancelling their purchase orders

which, in fairness to them, they felt themselves entitled to do. Abraham and Brukenfeld, however, considered the cancellations improper and, on November 9, 1971, the scheduled settlement date for the transaction, Brukenfeld tendered delivery of the Certificates. Satnick and Spingarn refused to accept delivery or to make payment. Thereafter, omitting details not significant here, Abraham initiated arbitration proceedings against Spingarn and Satnick claiming damages for their failure to complete the aforesaid transaction. Satnick and Spingarn answered that they were not bound by the transaction because Abraham and Brukenfeld were guilty of improper conduct. Before the arbitration came to a hearing, it was settled by the Stipulation in February, 1973.

7. By the terms of the Stipulation, the parties agreed to settle the dispute on the following basis:

(a) Before February 6, 1973, Satnick and Spingarn were to deliver to their attorneys, Wolf Haldenstein Adler Freeman Herz & Frank ("Wolf Haldenstein"), the following to be held in escrow:

(1) certified checks in the amounts of \$12,739.08 and \$6,260.92, respectively (Stip. § 5); and

(2) releases, discharging Abraham (Stip. § 4).

(b) Before February 6, 1973, Abraham was to deliver to Wolf Haldenstein the following to be held in escrow:

(1) 1212 endorsed Certificates (after

the Split (Stip. § 6)

(2) a release discharging Satnick and Spingarn (Stip. § 3)

(c) On receipt of written notice of the entry of an award approving the Stipulation, Wolf Haldenstein was to (1) release the payments and the Satnick and Spingarn releases to Abraham, and (2) release the Certificates and the Abraham release to Satnick and Spingarn (Stip. §§ 5,6).

(d) In the event the arbitrators failed to approve the Stipulation, the releases, certificates and payments were to be returned to their respective depositors. (Stip. § 7) and the Stipulation was to be of no effect (Stip. § 8).

(e) The releases exchanged by the parties were not to be "construed as an admission of liability or wrongdoing on the part of any of the parties in the pending arbitration proceeding or for any other purpose..." (Stip. § 11).

8. Pursuant to the Stipulation, on February 5th Abraham delivered the endorsed certificates and a release of Satnick and Spingarn to Wolf Haldenstein, to be held in escrow. A copy of Abraham's letter of February 5th is annexed as Exhibit B hereto. The release is annexed as Exhibit C.

9. On February 23, 1973, the arbitrators rendered a decision approving the Stipulation, a copy of which is annexed as Exhibit D hereto. Abraham was advised of the decision by letter dated February 27, 1973,

a copy of which is annexed hereto as Exhibit E. On February 27, 1973, Abraham gave Wolf Haldenstein written notice of the arbitrator's decision, and the condition precedent set forth in the Stipulation having been met, the settlement became effective as of that date. Wolf Haldenstein then delivered \$19,000 and the releases to Abraham. The Satnick and Spingarn releases of Abraham are annexed as Exhibits F and G hereto.

10. The question now before this Court is who owned the subject Certificates on November 2, 1971. From the foregoing, it should be clear that Satnick and Spingarn did not acquire ownership of the Certificates in the November 1971 transaction which they repudiated. Between November 1971 and February 1973 they asserted no claim of ownership to the Certificates. To the contrary, in response to Abraham's claim for damages arising out of their failure to accept delivery, they asserted that the November transaction was void. Satnick and Spingarn did acquire ownership of the Certificates in February 1973, pursuant to the terms of the February 5th Stipulation. It is respectfully submitted that the terms of the Stipulation determine as of what date Satnick and Spingarn acquired the Certificates, and that the Stipulation is clear that they acquired such ownership in February 1973. As a matter of contract law, unless the 1973 Stipulation conveyed ownership to the Certificates as of November 1971, Abraham continued to be their owner on November 2, 1971.

11. A plain reading of the Stipulation, particularly Section 6 thereof, discloses no intention to

ratify or consummate the November 1971 transaction or to convey Certificate ownership as of November 1971. Indeed, quite the contrary intention is disclosed, for Section 6 of the Stipulation, speaking as of February 5, 1973, provides that Abraham "will deliver to Wolf Haldenstein in escrow 1212 Westinghouse Electric Interim Certificates owned by it." Thus by the terms of the Stipulation, Abraham owned the Certificates as of February 5, 1973 and Satnick and Spingarn acquired them as of a later date.

12. Going beyond the language of the Stipulation, this conclusion is supported by the actual circumstances surrounding the settlement. As legal officer of Abraham, I represented it in the NASD arbitration and in the negotiation of the Settlement. Essentially, the parties agreed (subject to approval by the arbitrators) that in consideration of Abraham's release of its claims against Satnick and Spingarn for damages in the aggregate amount of \$39,390, they would pay Abraham the aggregate sum of \$19,000 and release Abraham of any claims arising out of the November 1971 transaction. In addition, Satnick and Spingarn requested that at the same time the Certificates be assigned to them, to which Abraham agreed. At no time during the negotiation of the Settlement did Satnick, Spingarn or their counsel state any intention or desire that Abraham assign title to the Certificates retroactive to November 1, 1971. Similarly, at no time in the drafting of the Stipulation did they request the insertion of any such language in the Stipulation. Abraham, acting through its officers, was not asked nor did it intend to

assign title to the Certificates retroactive to November 1971. Abraham's assignment was clearly and unambiguously made in February 1973 as of February 1973.

13. The conclusion that Abraham is entitled to participate in the Settlement Fund as owner of the Certificates on November 2, 1971 is strongly supported by the equities of the situation. Upon its purchase of the Certificates in 1971, Abraham paid their full market price, and on November 1, 1971, Abraham was prepared to sell them for the then market price. When the transaction was repudiated, Abraham, as owner of the Certificates on November 2, 1971, suffered a considerable loss by reason of the sudden evaporation of their market value on that date. It is my understanding that the Settlement Fund is designed to recompense owners of the Certificates who suffered just such a loss.

14. That Abraham subsequently settled its differences with Satnick and Spingarn does not alter the situation. On November 1, 1971, Abraham held Certificates worth \$39,390 (606 x \$65), which were sold in February 1973 on the receipt of \$19,000. The difference, being \$20,390, represents the loss sustained by Abraham by reason of the conduct of Westinghouse complained of in the class action. Having sustained this real economic loss, by virtue of its having been the owner of the Certificates on November 2, 1971, Abraham should be entitled to a proportionate share of the Settlement Fund awarded to the class of which it is a member.

15. Any other disposition of this matter will subject Abraham to unjustified prejudice, for Abraham in good faith relied on the Notice to the Class, dated March 31, 1975, with respect to redefinition of the Class. Originally, pursuant to the Order of this Court, dated February 7, 1974, the Class was defined as follows:

- (a) All persons who were shareholders of Americar, Inc. and who received Interim Certificates representing shares of the common stock of Westinghouse Electric Corporation held in escrow as a result of the merger of Americar, Inc. and Westcar, Inc.
- (b) All persons who purchased Interim Certificates on the open market, during the period October 30, 1970 through October 29, 1971.

Clearly, Abraham, rather than Satnick or Spingarn, qualified as a member of the class so defined. Subsequently, pursuant to the order of this Court dated April 3, 1975, notice of a hearing was required to be given to all members of the Class with such hearing to relate to approval of the Stipulation of Settlement, which had as one of its provisions the redifinition of the Class. The Notice to the Class contained the following statement:

AS PART OF ITS APPROVAL OF THIS SETTLEMENT, THE COURT WILL BE ASKED TO REDEFINE THE CLASS HEREIN SO AS TO INCLUDE ALL PERSONS, EXCEPT FOR DEFENDANTS, WHO OWNED INTERIM CERTIFICATES ON OR BEFORE NOVEMBER 2, 1971. THIS SETTLEMENT, HOWEVER, PROVIDES FOR PAYMENT ONLY TO THOSE PERSONS, EXCEPT FOR DEFENDANTS, WHO OWNED INTERIM CERTIFICATES ON NOVEMBER 2, 1971. (emphasis added)

Knowing that it held the Certificates from November 1971 through February 1973 and that it had not made any retro-active conveyance of the Certificates, Abraham was entitled to rely on the Notice and not make any objection

to the redefinition of the Class. Abraham's thinking in this regard was buttressed by the knowledge that even had the original transaction been completed, Satnick and Spingarn would not have become owners of the Certificates until the Settlement date of the trade, November 9, 1971.

16. The subsequent notices to the class with respect to its definition all contained the same language.

The Judgment herein, dated July 15, 1975 stated:

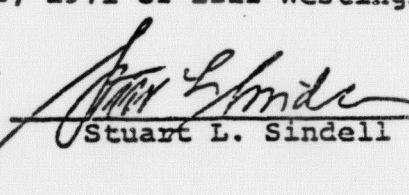
"The persons who are entitled to make claims under the Stipulation of Settlement are limited to those persons, except for defendants herein, who owned Interim Certificates as of November 2, 1971."

The Proof of Claim Form itself stated:

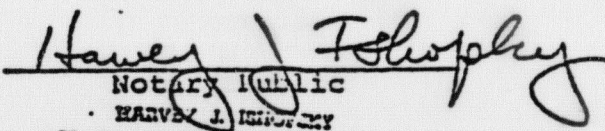
"Owners shall not include persons who purchased Interim Certificates after November 2, 1971."

17. By reason of the foregoing, it is respectfully submitted that Abraham owned the Certificates and bore the risk of loss with respect thereto between November 2, 1971 and February 1973, and that Abraham actually sustained a loss by reason of its holding of the Certificates on November 2, 1971.

WHEREFORE, ABRAHAM respectfully requests that it be allowed to participate to the extent of its pro-rata share in the Settlement Fund created herein by reason of its ownership on November 2, 1971 of 1212 Westinghouse Interim Certificates.


Stuart L. Sindell

Sworn to before me this
5 day of March, 1976.


Notary Public

HARVEY J. ISIDOROFF

No. 21-4567224 Qual. in Kings Co.
NOTARY PUBLIC, State of New York
Commission Expires March 30, 1977

In the Matter of the Arbitration Between

Abraham & Co.

and

Satnick-Japha, Inc.
Spingarn & Co., Inc.

Stipulation

and

Settlement

It is hereby stipulated and agreed, by and between counsel for the respective parties that:

1. Satnick-Japha, Inc. (Satnick) shall pay to Abraham & Co., Inc. (corporate successor to Abraham & Co., a New York limited partnership) (Abraham) the sum of Twelve thousand Seven Hundred Thirty-Nine Dollars and Eight Cents (\$12,739.08) in full settlement of Abraham's claim in arbitration against Satnick in the amount of Twenty-Six thousand three Hundred Ninety Dollars and No Cents (\$26,390.00) pending before the National Association of Securities Dealers, Inc. (NASD).

2. Spingarn & Co., Inc. (Spingarn) shall pay to Abraham the sum of Six Thousand Two Hundred Sixty Dollars and Ninety-Two Cents (\$6,260.92) in full settlement of Abraham's claim in arbitration against Spingarn in the amount of Twelve Thousand Nine Hundred Forty Dollars and No Cents (\$12,940.00) pending before the NASD.

3. On or before Tuesday, February 6, 1973, Abraham will deliver to Wolf, Haldenstein, Adler, Freeman, Herz and Frank (Wolf, Haldenstein) a duly executed release of both Satnick and Spingarn, which release shall be held by Wolf, Haldenstein in escrow pending approval of the

EXHIBIT A

NASD Arbitration panel of this stipulation and receipt of written notice of the entry of an award ("the award") based thereon.

4. On or before Tuesday, February 6, 1973, Satnick and Spingarn will deliver to Wolf, Haldenstein duly executed releases of Abraham to be held by Wolf, Haldenstein in escrow pending receipt of written notice of "the award".

5. On or before Tuesday, February 6, 1973, Satnick and Spingarn will each deliver to John W. Herz of Wolf, Haldenstein certified checks -- Satnick's in the amount of Twelve Thousand Seven Hundred Thirty-Nine Dollars and Eight Cents (\$12,739.08) and Spingarn's in the amount of Six thousand Two Hundred Sixty Dollars and Ninety-Two Cents (\$6,260.92), each of which shall be payable to Wolf, Haldenstein and held by Wolf, Haldenstein in escrow for the benefit of Abraham pending receipt of written notice of "the award".

6. On or before Tuesday, February 6, 1973, Abraham will deliver to Wolf, Haldenstein in escrow 1,212 Westinghouse Electric Interim Certificates ("certificates") owned by it (after a 2 for 1 split) and which are the subject of the claims agreed to be settled upon written entry of "the award". The certificates delivered hereunder will be duly endorsed and 812 such certificates may be released by Wolf, Haldenstein to Satnick and 400 certificates to Spingarn upon written notice of "the award".

7. In the event the panel of arbitrators of the NASD fails to approve the settlement hereby agreed to by the parties, all releases, certificates and payments will be

returned to the respective parties who deposited them in escrow with Wolf, Haldenstein.

8. In the event the panel of arbitrators disapproves the settlement hereby agreed to by the parties, no party hereto or representative of such party may refer to or make use of this stipulation, the terms hereof, or any part or all of the negotiations or discussions incident thereto as evidence in any proceeding before the NASD or elsewhere relating to the claims herein.

9. In the event the stipulation is approved by the panel of arbitrators and "the award" is entered, Wolf, Haldenstein shall disburse to Abraham the sum of Nineteen Thousand Dollars and No Cents (\$19,000.00) paid in the aggregate by Satnick and Spingarn hereunder.

10. As used herein, claims means: claims, answers, statements, defenses, counter-claims and any complaint, action or assertion of any kind or form whatever.

11. It shall be understood that the releases to be exchanged by the parties shall not be construed as an admission of liability or wrongdoing on the part of any of the parties in the pending arbitration proceeding or for any other purpose and that any award rendered by the arbitration panel based on this stipulation shall be final and deemed a collateral estoppel, and, if reduced to a judgment in a court of competent jurisdiction, res judicata.

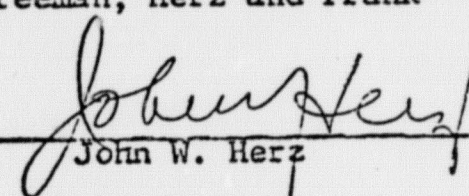
Dated: February 5, 1973

On Behalf of

Satnick-Japha, Inc.
and
Spingarn & Co., Inc.

Wolf, Haldenstein, Adler,
Freeman, Herz and Frank

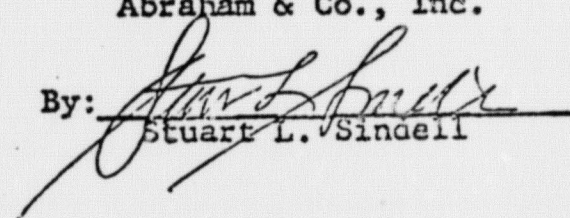
By:


John W. Herz

On Behalf of

Abraham & Co., Inc.

By:


Stuart L. Sindell

Abraham & Co. Inc.

A

69

120 Broadway
New York, N.Y. 10005

MEMBER

NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE, INC.
COMMODITY EXCHANGE, INC.
NEW YORK COCOA EXCHANGE, INC.
MIDWEST STOCK EXCHANGE, INC.
PACIFIC COAST STOCK EXCHANGE
NEW YORK COFFEE & SUGAR EXCHANGE, INC.
PBW STOCK EXCHANGE, INC.

TELEPHONE:
(212) 732-7200

TWX:
(212) 571-0332

CABLES:
"ABRACO"

February 5, 1973

Mr. John W. Herz
Wolf, Haldenstein, Adler, Freeman, Herz and Frank
270 Madison Avenue
New York, N. Y. 10016

Re: In the Matter of the NASD Arbitration of
Abraham & Co., Inc. v. Satnick-Japha, Inc.
and Spingarn & Co., Inc.

Dear Mr. Herz:

In connection with the above proceeding, enclosed
you will find the following:

1. Three copies of the Stipulation of Settlement setting forth the terms of settlement agreed upon by the parties.
2. Three copies of the letter to the NASD arbitrators requesting ex-parte approval of the Stipulation and the entry of an award based thereon.
3. Abraham & Co., Inc. release of both Satnick-Japha, Inc. and Spingarn & Co., Inc. to be held by you in escrow pending entry of the award.
4. Endorsed for negotiation, 1,212 Westinghouse Electric Interim Certificates to be held by you in escrow pending entry of the award.

Please sign the attached copy of this letter signifying your receipt of items 3 and 4, and if items 1 and 2 are in order, co-sign the original and a copy of each and return them with the copy of this letter to our courier.

Exhibit B

Mr. John W. Herz

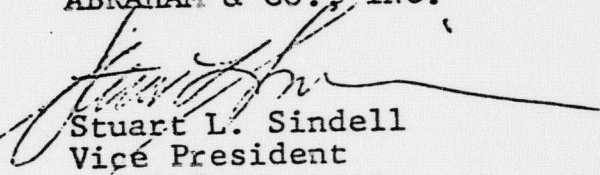
Feb. 5, 1973

I will file original items 1 and 2 with the NASP.

I expect I will hear from you if you have any comments concerning the enclosed.


Very truly yours,

ABRAHAM & CO., INC.


Stuart L. Sindell
Vice President
Legal Department

SLS:pf
encl.

Items 3 and 4

Received by 

To all to whom these Presents shall come or may Concern,

Greeting: KNOW YE, That ABRAHAM & CO. INC., 120 Broadway A 71
New York, New York, 10005

a corporation organized and existing under and by virtue of the laws of the state
of Delaware for and in consideration of the sum of
Nineteen Thousand-----dollars (\$19,000.00)
lawful money of the United States of America to it in hand paid by Satnick-Japha, Inc.
(50 Broadway, New York, N.Y. 10004) and Spingarn & Co., Inc.
(501 Seventh Avenue, New York, N.Y.)

the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by
these presents does for itself and its successors, remise, release and forever discharge the said
Satinick-Japha Inc. and Spingarn & Co., Inc.

their
heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of
action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, con-
tracts, controversies, agreements, promises, warranties, trespasses, damages, judgments, extents, executions,
claims and demands whatsoever, in law, in admalty, or in equity, which against
Satinick-Japha, Inc. and Spingarn & Co., Inc.

arising ou
of
it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason
of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of the
presents. Westinghouse Electric Interim Certificates.

This release may not be changed orally.

In Witness Whereof, the said Abraham & Co. Inc.

has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized
officer on the 1st day of February 19 73

(Corporate Seal)

Abraham & Co. Inc.

By

STATE OF New York

COUNTY OF New York

ss.:

On the 1st day of February 19 73 before me personally came

George Heyman, Jr. to me known, who, being by me duly sworn, did
depose and say that he resides at No. 120 Broadway, New York, New York 10005

that he is the President of Abraham & Co. Inc.
the corporation described in, and which executed, the foregoing instrument; that he knows the seal of
said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by
order of the board of Directors of said corporation; and that he signed his
name thereto by like order.

STUART L. SINGELL
Notary Public, State of New York
No. 120 Broadway
City of New York
Comm. Exp. 12-31-73

Exhibit C

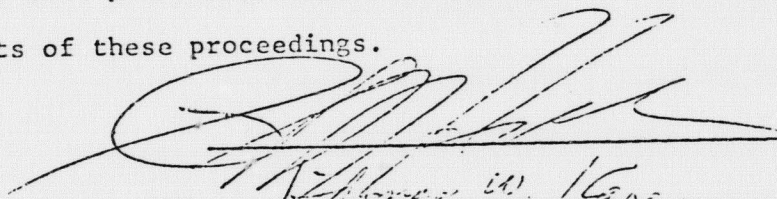
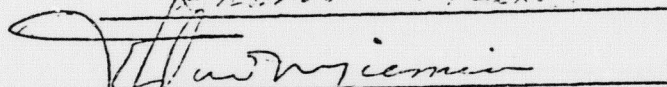
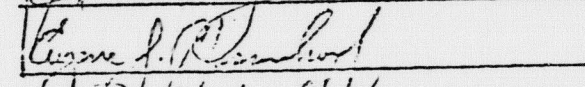

In the Matter of the Arbitration Between
ABRAHAM & CO.
SPINGARN & CO., INC.
BRUKENFELD, MITCHELL & COMPANY
SATNICK-JAPHA, INC.

DECISION

We, the undersigned, being the arbitrators selected to hear and determine the matter in controversy between the above captioned parties set forth in submissions to arbitration signed by the parties on May 12, 1972, July 20, 1972, September 26, 1972, June 15, 1972 and July 21, 1972, respectively;

And, having reviewed the stipulations and settlements proposed by each of the parties which shall be deemed incorporated and a part of this decision, do hereby accept and approve such agreements and orders of settlement as to each of the parties pursuant to the provisions of Section 12 of the Code of Arbitration Procedure and further find such to be fair and equitable;

And, that the sums previously deposited by each of the parties be retained as costs of these proceedings.


William W. Kane

William J. Cernin

Eugene L. Diamond

Robert L. O'Neil

Dated: February 23, 1973


New York, New York

Exhibit D

STATE OF New York
COUNTY OF New York

ss.:

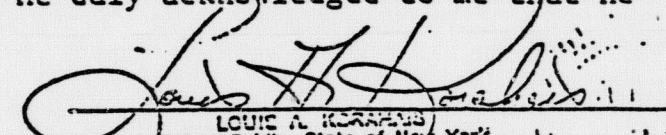
On this 23rd day of February, 1973, before me personally appeared Philip J. Hoblin, Jr., to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


Notary Public, State of New York
No. 02-7337935
Qualified in Essex County
Certificate filed in New York Co.
Commission Expires March 30, 1974

STATE OF New York
COUNTY OF New York

ss.:

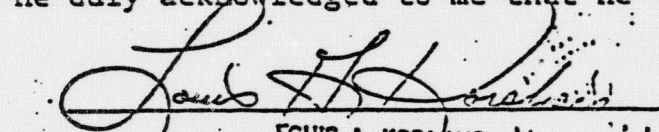
On this 23rd day of February, 1973, before me personally appeared Edward Niemiec, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


LOUIS A. KORNBLITH
Notary Public, State of New York
No. 02-7337935
Qualified in Essex County
Certificate filed in New York Co.
Commission Expires March 30, 1974

STATE OF New York
COUNTY OF New York

ss.:

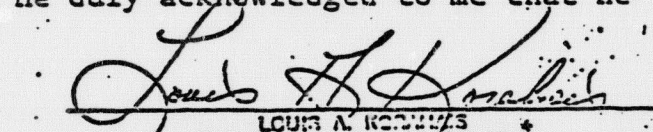
On this 23rd day of February, 1973, before me personally appeared Robert A. Foy, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


LOUIS A. KORNBLITH
Notary Public, State of New York
No. 02-7337935
Qualified in Essex County
Certificate filed in New York Co.
Commission Expires March 30, 1974

STATE OF New York
COUNTY OF New York

ss.:

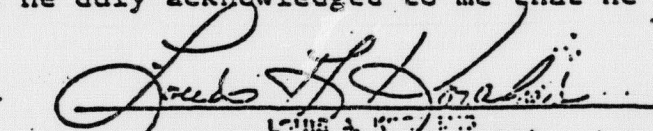
On this 23rd day of February, 1973, before me personally appeared Thomas W. Kane, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


LOUIS A. KORNBLITH
Notary Public, State of New York
No. 02-7337935
Qualified in Essex County
Certificate filed in New York Co.
Commission Expires March 30, 1974

STATE OF New York
COUNTY OF New York

ss.:

On this 23rd day of February, 1973, before me personally appeared Eugene J. Messenkopf, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.


LOUIS A. KORNBLITH
Notary Public, State of New York
No. 02-7337935
Qualified in Essex County
Certificate filed in New York Co.
Commission Expires March 30, 1974

NASD

A 74

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
17 BATTERY PLACE • SUITE 810 • NEW YORK • NEW YORK 10004
(212) 943-8400

February 27, 1973

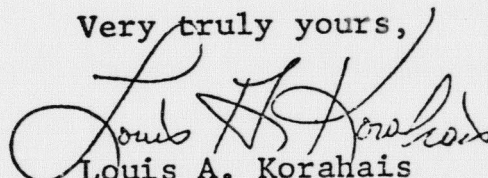
Stuart L. Sindell, Esquire
Legal & Compliance Director
Abraham & Co.
120 Broadway
New York, New York 10005

Re: In the Matter of the Arbitration Among Abraham & Co.,
Spingarn & Co., Inc., Brukenfeld, Mitchell & Company,
and Satnick-Japha, Inc.

Dear Mr. Sindell:

In accordance with the Code of Arbitration Procedure of
this Association, a decision in reference to the above captioned
matter has been reached by the arbitrators and is enclosed.

Very truly yours,


Louis A. Korahais
Director of Arbitration

LAK:jmp
Enclosure

Exhibit E

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,

GREETING: KNOW YE, That SATNICK-JAPHA, INC., for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America to it in hand paid by ABRAHAM & CO., the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said ABRAHAM & CO., its successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands, in law, in admiralty, or in equity, arising out of transactions in Westinghouse Electric Interim Certificates on November 1, 1971, which against ABRAHAM & CO. it ever had, now has or which it or its successors hereafter can, shall or may have arising therefrom, from the beginning of the world to the day of the date of these presents.

This release may not be changed orally.

IN WITNESS WHEREOF, the said SATNICK-JAPHA, INC. has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 2nd day of February, 1973.

[Corporate Seal]

SATNICK-JAPHA, INC.

By: Robert H. Felt

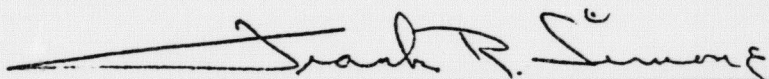
Exhibit F

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

A 76

On the 2nd day of February, 1973, before me personally came ROBERT K. JAPHA, to me known, who, being by me duly sworn, did depose and say that he resides at No. CHESTER, N.Y.

that he is the VICE PRES. & TREAS. of SATNICK-JAPHA, INC., the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.



FRANK R. SIMONE
Notary Public, State of New York
No. 24-9014900
Qualified in Kings County
Commission Expires March 30, 1974

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,

GREETING: KNOW YE, That SPINGARN & CO., INC., for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America to it in hand paid by ABRAHAM & CO., the receipt whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said ABRAHAM & CO., its successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands in law, in admiralty, or in equity, arising out of transactions in Westinghouse Electric Interim Certificates on November 1, 1971, which against ABRAHAM & CO. it ever had, now has or which it or its successors hereafter can, shall or may have arising therefrom, from the beginning of the world to the day of the date of these presents.

This release may not be changed orally.

IN WITNESS WHEREOF, the said SPINGARN & CO., INC. has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 2nd day of February, 1973.

[Corporate Seal]

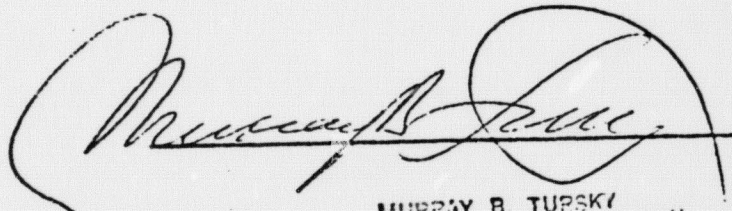
SPINGARN & CO., INC.

By: 

Exhibit G


STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 2nd day of February, 1973, before me personally came: *Howard S. Spingarn*, to me known, who, being by me duly sworn, did depose and say that he resides at No. *Lawn Lane Oyster Bay, NY* that he is the *Pres.* of SPINGARN & CO., INC., the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.



MURRAY B. TURSKY
Notary Public State of New York
No. 41-9401000
Qualified in Queens County
Commission Expires March 20, 1975

NASD FORMS 101, DATED NOVEMBER 4, 1971

OFFICIAL NASD DON'T KNOW NOTICE FORM 101										PREPARED BY		DATE OF THIS NOTICE	
<small>OUR RECORDS INDICATE THE FOLLOWING TRANSACTION WITH YOU THAT WE HAVE CONFIRMED AS REQUIRED BY SECTION 5(a) OF THE UNIFORM PRACTICE CODE. WE HAVE NO RECORD OF HAVING RECEIVED FROM YOU A CONFIRMATION OR A COMPARISON OF THE TRADE OR A SIGNED COPY. WE HEREBY NOTIFY YOU THAT UNLESS WE RECEIVE SIGNED COPIES 2 AND 3 OF THIS "DON'T KNOW NOTICE" WITHIN THE TIME PRESCRIBED BY SUBSECTIONS (2) AND (3) OF SECTION 5(b) MANUALLY EXECUTED PURSUANT TO THE PROVISIONS OF SUBSECTION (4) THEREOF WE WILL ASSUME NO FURTHER LIABILITY FOR THIS TRANSACTION IN ACCORDANCE WITH THE PROVISIONS OF THE REFERENCED SUBSECTION (3).</small>												<p>176963</p>	
YOU	QUANTITY	PRICE	PRINCIPAL	INTEREST	NET AMOUNT	TRADE DATE	SETTLEMENT DATE						
BOT	200	65	13	00000	13 00000	11 1 71	11 9 71	11	4	71			
SECURITY DESCRIPTION: WESTINGHOUSE ELEC INTERIM CTF													
SECURITY NO.													
NAME AND ADDRESS OF CONTRA-BROKER													
6697 SPINGARN & CO 501 SEVENTH AVE NEW YORK N Y 10018 <i>ATTN: Mr. J. Spingarn</i>													
CONTRA-BROKER NO.													
TO <input type="checkbox"/> MAIL <input type="checkbox"/> MESSENGER													
REF 230 SYMBOL (IF ANY)													
NAME AND ADDRESS OF CONFIRMING BROKER													
BRUKENFELD MITCHELL & CO 90 BROAD STREET NEW YORK N Y 10004													
CONFIRMING BROKER NO.													
FROM													
REFER TO CK PROCEDURE ON REVERSE OF PARTS 3 & 5.													

BEST COPY AVAILABLE

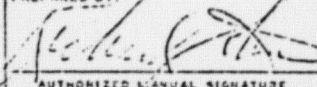
Exhibit A

A : 80

OFFICIAL NASD DON'T KNOW NOTICE FORM 101

RBS INDICATE THE FOLLOWING TRANSACTION WITH YOU THAT WE HAVE CONFIRMED AS REQUIRED BY SECTION 9(a) OF OUR PRACTICE CODE. WE HAVE NO RECORD OF HAVING RECEIVED FROM YOU A CONFIRMATION OR A CORRECTION OF OR A SIGNED DK. WE HEREBY NOTIFY YOU THAT UNLESS WE RECEIVE SIGNED COPIES 2 AND 3 OF THIS "DON'T KNOW" WITHIN THE TIME PRESCRIBED BY SUBSECTIONS (2) AND (3) OF SECTION 9(b) MANUALLY EXECUTED PURSUANT TO PROVISIONS OF SUBSECTION (a) THEREOF WE WILL ASSUME NO FURTHER LIABILITY FOR THIS TRANSACTION IN ACCORDANCE WITH THE PROVISIONS OF THE REFERENCED SUBSECTION (3).

PREPARED BY:



D 17690

AUTHORIZED MANUAL SIGNATURE

QUANTITY	PRICE	PRINCIPAL	INTEREST	NET AMOUNT	TRADE DATE	SETTLEMENT DATE	DATE OF THIS NOTICE
406	65	26 390 00		26 390 00	11 1 71	11 9 71	11 4 71

SECURITY DESCRIPTION:

WESTINGHOUSE ELEC INTERIM CTF

REF 232

SYMBOL (IF ANY)

CITY NO.

NAME AND ADDRESS OF CONTRA-BROKER

75
BROKER NO.

SATNICK-JAPHA INC
50 BROADWAY
NEW YORK N Y 10004

TO →

NAME AND ADDRESS OF CONFIRMING BROKER

CONFIRMING BROKER-NO.

FROM →

BRUKENFELD MITCHELL & CO
90 BROAD STREET
NEW YORK N Y 10004

SENDER

REFER TO DK PROCEDURE ON REVERSE OF PARTS 3 & 5.

2

LETTERS OF NOVEMBER 8, 1971

BY HAND

November 8, 1971

Spingarn & Co., Inc.
501 Seventh Avenue
New York, N.Y. 10018

Dear Sirs:

We represent Brukenfeld, Mitchell & Co. On November 1, 1971 that firm concluded a sale to you of 200 shares of Westinghouse Electric Interim Certificates for \$13,000. Later that day, you apparently advised Brukenfeld, Mitchell & Co. that you would not honor the transaction and thereafter sent a "Don't Know" notice with respect to it.

Brukenfeld, Mitchell & Co. will deliver 200 shares of Westinghouse Electric Interim Certificates to you today, the settlement date. We have advised Brukenfeld, Mitchell & Co. that you are required to accept this delivery and to make full payment of the agreed amount. Your refusal to honor this transaction is, in our opinion, unjustified in both fact and law.

We have been instructed promptly to commence appropriate legal proceedings to protect our client's position if you refuse to accept delivery and pay for these securities.

Very truly yours,

FRIED, FRANK, HARRIS, SHRIVER &
JACOBSON

Exhibit 3

BY HAND

November 3, 1971

Sathnick-Japha, Inc.
50 Broadway
New York, N.Y. 10004

Dear Sirs:

We represent Brukenfeld, Mitchell & Co. On November 1, 1971 that firm concluded a sale to you of 793 shares of Westinghouse Electric Interim Certificates for \$51,545. Later that day, you apparently advised Brukenfeld, Mitchell & Co. that you would not honor the transaction and thereafter sent a "Don't Know" notice with respect to it.

Brukenfeld, Mitchell & Co will deliver 793 shares of Westinghouse Electric Interim Certificates to you today, the settlement date. We have advised Brukenfeld, Mitchell & Co. that you are required to accept this delivery and to make full payment of the agreed amount. Your refusal to honor this transaction is, in our opinion, unjustified in both fact and law.

We have been instructed promptly to commence appropriate legal proceedings to protect our client's position if you refuse to accept delivery and pay for these securities.

Very truly yours,

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON

NASD REJECTION FORM NO. 801

DATED NOVEMBER 9, 1971

To accompany securities
on reclamation or rejection
pursuant to Sec's. 81-87 of
the Uniform Practice Code.

Official NASD RECLAMATION or REJECTION Form #801

14045

QUANTITY	SECURITY DESCRIPTION	AMOUNT	DATE OF RECLAIM
317 406	Westinghouse Co (CST) CO	25153- 26390 -	11/9/77

ABOVE SECURITIES RECEIVED ON _____ DATE _____

☐ NEEDS TAX STAMP

☐ WRONG SECURITY _____ SHOULD BE _____

☐ WRONG MONEY _____ YOU CHARGED _____

OUR MONEY _____

☐ CARRIES DUE BILL

☐ DUPLICATE DELIVERY _____ YOU DELIVERED ON _____

VIA _____

☐ NEEDS SIGNATURE GUARANTEE

☐ WRONG TRADE/SETTLE DATE _____ YOUR T/D S/D _____ WE SHOW T/D S/D _____

OTHER (EXPLAIN)

DK

NATIONAL BANK OF NORTH AMERICA #915

TO

Mitchell

RECLAIMED
BY

BY

PERSON MAKING RECLAIM

PHONE EXT.

ATTACH TO SECURITIES. RETURN SELF AND DELIVERY STATEMENT

Exhibit 4 A 83

DRUKENFELD DELIVERY BILL, DATED NOVEMBER 9, 1971

A

Dlw

5100

CERTIFICATE NUMBERS

QUANTITY	DESCRIPTION	PRICE	TRADE DATE
	RESERVE FUND INTEREST	(6)	11/17

SECURITY	TAG	ACCOUNT	PRINCIPAL	INTEREST	STATE TAX	TOTAL
4073	31	100	12,000.00			12,000.00

KNOX CO. INC.

THE SPECIAL SECURITY AND DELIVERY ACCOUNTS
REMAINING FOR PAYMENT OF THE REMAINING TEM-
PERATURE FOR PURPOSES OF VERIFICATION, THE
UNION HAS AGREED THAT THEY WILL HOLD THE
BANK ON PROCEED THEREOF, IN TRUST FOR THE
BANKER MAKING THIS DELIVERY, UNTIL PAID FOR
TITLE TO THESE SECURITIES REMAINS WITH THE
BANKER MAKING THIS DELIVERY, FOR ITS OWN
ACCOUNT AS AGENT FOR OTHERS AS THE CASE MAY
BE, UNTIL PAYMENT HAS BEEN RECEIVED IN FULL.

64	66??
OL.	BKR.

SIGNATURE

AUTOMATIC COMPUTER SERVICE, INC.

Exhibit 5 . AF4

SPINGARN LETTER DATED NOVEMBER 15, 1971

Spingarn & Co., Inc.

MEMBERS NEW YORK STOCK EXCHANGE

501 SEVENTH AVENUE

NEW YORK, N. Y. 10018

November 15, 1971

CH 4-6900
CH 4-8110

Brukenfeld, Mitchell & Co.
90 Broad Street
New York, New York 10004

Re: Westinghouse Electric
Interim Certificates

Gentlemen:

We refer to a letter, dated November 8, 1971, addressed to this firm from your attorneys, Fried, Frank, Harris, Shriver & Jacobson, wherein they state that if we refuse to accept delivery of 200 units of Westinghouse Electric Interim Certificates and do not make full payment in the amount of \$13,000, legal action promptly will be commenced against us.

This letter is to confirm the telephone conversations of November 1, 1971, between Messrs. Howard Spingarn & James Spingarn of this office and Mr. Edward Hirsch of your office, wherein Mr. Howard Spingarn informed Mr. Hirsch that we disavowed the trade with you of the 200 units. As you know, less than one hour before the foregoing telephone conversation occurred, representatives of this firm had a few telephone conversations with Mr. Hirsch, the first of which was initiated by Mr. Hirsch to offer us the units.

Within the ensuing hour we learned that there was not disclosed to us certain material information which had adversely affected the value and marketability of the units. It also has come to our attention that certain material misrepresentations and omissions were made to us in the foregoing telephone conversations with respect to the identity of the seller of the units and the reasons for the sale.

On the basis of the foregoing, among other things, and upon the advice of counsel, we believe that we are not obligated to accept deliver of the units or make payment therefor.

Exhibit I

Brukenfeld, Mitchell & Co.
90 Broad Street
New York, New York

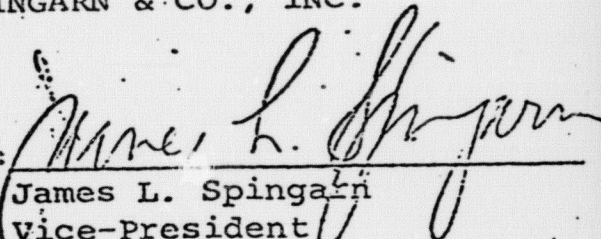
Page Two

November 15, 1971

Very truly yours, .

SPINGARN & CO., INC.

By:


James L. Spingarn
Vice-President

EXCERPT FROM ABRAHAM STATEMENT OF NASD CLAIM

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

STATEMENT OF CLAIM

On November 1, 1971, for settlement November 9, 1971, Brukenfeld, Mitchell & Co., acting as agent, sold for the account of Abraham & Co., 200 Westinghouse Electric Interim Certificates in the over-the counter-market at a price of \$65.00 per certificate. Spingarn & Co., Inc. purchased 200 such certificates.

Abraham made timely delivery of the certificates to Brukenfeld, and on November 9, 1971 Brukenfeld delivered 200 certificates to Spingarn against the sale price of \$12,940.00. Spingarn "DK'd" the delivery and refused to recognize and honor the transaction.

It is Abraham's contention that Spingarn arbitrarily and capriciously breached its contractual commitment respecting its purchase of 200 Westinghouse Certificates in contravention of fundamental industry rules and standards of fair and honorable dealing.

Accordingly, Abraham seeks redress from Spingarn in the amount of the sale price of \$12,940.00, plus accrued interest and arbitration costs.

ABRAHAM & CO.

BY: 

Partner

Exhibit B

ABRAHAM LETTER DATED JANUARY 27, 1972

Abraham & Co.
120 Broadway
New York, N.Y. 10005

MEMBERS
NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE
COMMODITY EXCHANGE, INC.
NEW YORK COCOA EXCHANGE
MIDWEST STOCK EXCHANGE
PACIFIC COAST STOCK EXCHANGE

A 88

TELEPHONE:
RECTOR 2-7200

CABLES:
"ABRACO"

January 27, 1972

Mr. Robert Lynch
Assistant Director
National Association of Securities Dealers, Inc.
77 Water Street
New York, New York 10005

Dear Mr. Lynch:

Abraham & Co. wishes to lodge a complaint against Satnick-Japha, Inc., 50 Broadway, New York, New York, a member firm of the Association.

Abraham's complaint arises out of the following set of facts:

On November 1, 1971 for settlement November 8, 1971, Brukenfeld, Mitchell & Co. acting as agent, sold for the account of Abraham & Co., 606 Westinghouse Electric Interim Certificates in the over-the-counter market at a price of \$65.00 per certificate. Satnick-Japha purchased 406 such certificates.

Abraham made timely delivery of the certificates to Brukenfeld, and on November 8, 1971 Brukenfeld delivered 406 certificates to Satnick against the sale price of \$26,390.00. Satnick "D.K.d" the delivery and refused to recognize and honor the transaction, basing such refusal on the spurious allegation that the seller of the Westinghouse Certificates was in possession of inside information affecting the status of the Westinghouse Certificates at the time such certificates were sold.

It is Abraham's contention that Satnick arbitrarily and capriciously breached its contractual commitment respecting its purchase of 406 Westinghouse Certificates in contravention of fundamental industry rules and standards of fair and honorable dealing.

In view of the foregoing, we would ask the Association to conduct an inquiry into this matter.

Mr. Robert Lynch

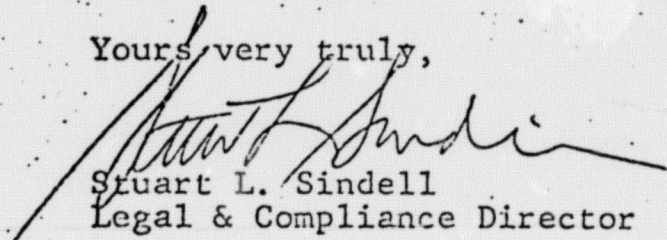
- 2 -

Jan. 27, 1972

For your information, Spingarn & Co., Inc. the purchaser of 200 of the 606 certificates sold, also failed to honor its transaction. Spingarn, however, has agreed to submit this dispute to arbitration under the auspices of the Association.

Satnick-Japha, on the other hand, has refused to arbitrate its dispute with Abraham under your auspices and we believe that its refusal is designed merely to delay the resolution of the dispute for the predictably lengthy period which will be consumed by a trial in the courts.

Yours very truly,



Stuart L. Sindell
Legal & Compliance Director

SLS:ef

Encs. 2

Confirmation &
Delivery Bill

BRUKENFELD LETTER DATED FEBRUARY 1, 1973

**BRUKENFELD,
MITCHELL & CO.**

A 90

February 1, 1973

Abraham & Co.
120 Broadway
New York, New York 10005

Attention: Mr. Stuart Sindel

Gentlemen:

We are returning herewith 606 shares Westinghouse Electric Corporation Interim Certificates.

Certificate #	# of Shares
CU1714 - CU1516/17	100 each
CU1923	48
CU1869	73
CU1924	57
CU1902	43
CU1903	25
CU1791	21
CU1863	15
CU1762	9
CU1825	7
CU316-CU1971	3 each
CU1900-CU1993	1 each

By your so accepting these shares we hereby cancel your sale of 11/1/71 in the amount of \$39,208.20.

Very truly yours,

Edward A. Hirsch

EAH:bs
Enc.

Exhibit 6

EXCERPT FROM ABRAHAM PROOF OF CLAIM

On November 1, 1971, for settlement November 9, 1971, Brukenfeld, Mitchell & Co., acting as agent, sold for the account of Abraham & Co., 606 Westinghouse Electric Corporation Interim Certificates in the over-the-counter market. The brokerage firms of Satnick-Japha, Inc. and Spingarn & Co., Inc., respectively purchased 406 and 200 of such certificates. Both firms refused to recognize and honor the transactions. In April of 1972, Abraham & Co. instituted an arbitration proceeding against both firms before the National Association of Securities Dealers, Inc. in an effort to enforce the transactions. On February 5, 1973, before the matter was heard in arbitration, the parties entered into a stipulation of settlement providing for the payment to Abraham & Co. by both firms of a specified sum of money in consideration of the release of both firms by Abraham & Co. and the delivery by Abraham & Co. of 812 interim certificates to Satnick-Japha, Inc. and 400 such certificates to Spingarn & Co., Inc. The stipulation of settlement was entered into the record of the arbitration proceeding as an award. It should be noted that the stipulation of settlement did not specify that upon delivery of the certificates passage of title would take effect as of the original transaction date (November 1, 1971).

In light of the foregoing facts, it is respectfully submitted that Abraham & Co. was and remained the beneficial owner of 606 Westinghouse Electric Corporation Interim Certificates on and as of November 2, 1971 (or 1212 such certificates giving effect to the subsequent stock split).

Exhibit E

WHITMAN & RANSOM LETTER DATED MARCH 30, 1976
WITH LETTER OF NOVEMBER 13, 1975 ANNEXED

T.C. 8-26-76

Rec'd
APR 1 1976

A 92

WHITMAN & RANSOM

522 FIFTH AVENUE

NEW YORK, N. Y. 10036

212-575-5600



March 30, 1976

RICHARD JOYCE SMITH
F. VAN NIGLEN PARR
PATRICK M. SULLIVAN
CHARLES FRANCIS PREUSSE
PAUL E. DOMERTY
JAMES B. ANDERSON
HERBERT F. FOLK
JAMES C. SARGENT
GEORGE J. NOUMAIR
JOHN A. PATERACKI, JR.
ROBERT C. OBRIEN
DONALD L. WALLACE
ROBERT S. NEWMAN
DANIEL F. CALLAHAN
F. HERBERT FREM, JR.
J. RAY ROBINSON
E. KENDALL GILBERT, JR.
ARCHIBALD H. CASHION
JOSEPH V. MCCARTHY
CAROL LITTLE, JR.
PAUL A. CABLE
WILLIAM D. HART, JR.
WILLIAM M. KAHN
JOHN S. TWOMEY, JR.
DONALD CAMPBELL BROWN
GERALD D. GRODEN
PAUL M. O'CONNOR, JR.
W. VAN ORDEN ONICHTER
MARTIN RUBINSTEIN
PETER D. LOWENSTEIN
JUDITH A. GELF
JOHN MADLOCK
JAMES V. BELL
JAMES J. MORRIS
RONALD A. PARSON
WILLIAM R. ZIEGLER

THOMAS T. HAYASHI
1917-1976

DAVID J. COLTON
CHARLES S. BANNERMAN
JOHN D. GRAY
CHRISTOPHER H. SMITH
COUNSEL

CABLE ADDRESSES
"WHITSOM"

OR
"BENGOSHI NEW YORK"
TELEX: 12 5109

1730 PENNSYLVANIA AVE., N.W.
WASHINGTON, D. C. 20006
202-296-6333

RESIDENT PARTNERS
JOHN S. MONAGHAN
TALBOT E. LINDSTROM

ADMITTED IN THE
DISTRICT OF COLUMBIA
AND NEW YORK

Hon. Charles M. Metzner
United States District Courthouse
Foley Square
New York, New York 10007

Re: Sirota et al. v. Econo-Car
International, Inc. et al.
Index No. 72 Civ. 4399 (CMM)

Honorable Sir:

This firm is counsel for Econo-Car International, Inc. and Westinghouse Electric Corporation in connection with the above securities fraud class action. The case was settled pursuant to a stipulation of settlement signed by the parties on March 31, 1975 and approved by Your Honor on July 15, 1975. Pursuant to that settlement Westinghouse contributed 37,728 common shares and the remaining defendants other than Econo-Car contributed a total of \$135,000. Printed notices of the settlement and proof of claim forms were mailed to all known qualifying Westinghouse interim certificate holders on September 2, 1975, with claims to be filed on or before October 18, 1975, which date was later extended by Your Honor to December 18, 1975.

Pursuant to Paragraph 8(d) of the Stipulation of Settlement, all parties were to review the claims and either accept or reject them. By letter dated November 13, 1975, a copy of which is attached, this firm rejected the claim of Abraham & Co. based on 1212 interim certificates on the ground

1 to

Hon. Charles M. Metzner

-2-

March 30, 1976

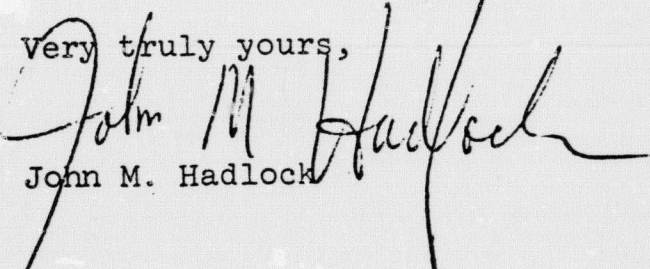
that Spingarn & Co., Inc. and Satnick-Japha, Inc. had submitted a proof of claim based on the identical 1212 interim certificates. Our position, as stated in our November 13, 1975 letter, was that only one party could file a claim based on any given interim certificate and that from the information submitted to us it appeared that Spingarn & Co., Inc. and Satnick-Japha, Inc. had purchased the subject certificates on or prior to November 2, 1971 although the settlement did not take place until sometime thereafter (apparently following an industry dispute procedure involving the transaction).

Although Westinghouse Electric Corporation and Econo-Car International, Inc. made an initial decision as they were required to do pursuant to the terms of the settlement agreement, they consider themselves to be quasi-stakeholders in connection with this dispute and to have no interest in the outcome of the dispute except that they urge that no more than a total of 1212 interim certificates be considered for purposes of computing the participation in the settlement. The pro rata computations for the settlement have already been made, subject to the provision that the escrow agent, The Northern Trust Company in Chicago, should not distribute the proceeds attributable to said 1212 certificates until this dispute is resolved.

Accordingly, Westinghouse and Econo-Car do not intend to file any papers in connection with this dispute other than this letter and have no position concerning the outcome of the dispute other than the request that under no circumstances should more than a total of 1212 interim certificates be approved in connection with this dispute.

Westinghouse and Econo-Car, however, do stand ready and willing to aid the court in any manner that may be helpful in connection with the resolution of the Abraham & Co. Spingarn & Co., Inc. and Satnick-Japha, Inc. interim certificate dispute.

Very truly yours,


John M. Hadlock

Enclosure

cc: Wolf Haldenstein Adler
Freeman Herz & Frank
Brauner, Baron, Rosenzweig
& Kligler
Kaplan, Kilsheimer & Foley
Alexander & Green
Hart & Hume

November 13, 1975

Stuart L. Sindell, Esq.
Abraham & Co., Inc.
120 Broadway
New York, New York 10005

Re: Dr. David Sirota et al. v. Econ-Car
International, Inc. et al. (Westing-
house Electric Corporation Interim
Certificates Class Action Litigation)

Dear Mr. Sindell:

This will acknowledge receipt of your letter of October 17, 1975 containing a proof of claim based on various interim certificates representing a total of 1212 shares. In lieu of including the shares as required by the proof of claim form you have included an Abraham & Co. statement reflecting that the interim certificates were sold on November 9th. You have also included a statement to the effect that the shares were sold on November 1st for settlement on November 9th and that an arbitration proceeding was initiated by Abraham & Co., Inc. against its buyers, Satnick-Japha Inc. and Spingarn & Co., Inc. to enforce the transaction. It appears that by stipulation dated February 5, 1973, which stipulation was entered as an award, the transactions were completed but pursuant to the agreed settlement terms Abraham & Co., Inc. received less than its original sales price. After adjusting for the Westinghouse stock split on November 29, 1971, Abraham & Co., Inc. ultimately delivered 400 of the subject shares to Spingarn & Co., Inc. and 812 of the shares to Satnick-Japha Inc.

Both Spingarn & Co., Inc. and Satnick-Japha Inc. have filed proofs of claim and submitted the 400 and 812 shares,

Stuart L. Sindell, Esq.

-2-

November 13, 1975

respectively. Quite obviously, the defendants in this action will not honor both your claim and their claims based on the same shares.

Paragraph 7(d) of the stipulation of settlement provides that any of the parties to this litigation may reject a claim by notifying the claimant in writing, setting forth the reasons for said rejection and advising the claimant that it has the right to a hearing before the court if it so desires. On behalf of Westinghouse Electric Corporation we are hereby rejecting your claim on the ground that the shares on which you are claiming were sold by you to Spingarn & Co., Inc. and Satnick-Japha Inc. on November 1, 1971, that you instituted proceedings to enforce that sale against said buyers and that the final stipulated award provided that the transaction would be consummated at a stipulated price, which was done. Accordingly, in our view, Spingarn & Co., Inc. and Satnick-Japha Inc. were the beneficial owners as of November 2, 1971, and are the proper parties to assert the claim with respect to the subject 1212 shares for which you are making claim.

Please be further advised that Paragraph 7(e) of the stipulation of settlement provides that any person whose claim has been rejected and desires to contest such rejection may, within twenty days after receipt of the notice of rejection, serve upon the attorneys for the parties to this action and file with the court a notice indicating its intention to contest the rejection and requesting a hearing before the court. Enclosed is a copy of the stipulation of settlement for your reference.

If you intend to contest this rejection please notify all attorneys or signatories to the enclosed stipulation of settlement. Please also notify Spingarn & Co., Inc. at 364 Seventh Avenue, New York, New York 10001 and Satnick-Japha Inc. at 50 Broadway, New York, New York 10004 inasmuch as your claim has a direct bearing on the claims filed by those two firms.

Very truly yours,

Enclosure

John M. Hadlock

cc: Spingarn & Co., Inc.
Satnick-Japha, Inc.
Kaplan, Kilsheimer & Foley, Esqs.
Hart & Hume
Alexander & Green

DECISION AND ORDER DATED AUGUST 23, 1976

On November 1, 1971, claimant Abraham & Co., Inc. (Abraham) authorized Brukenfeld, Mitchell & Co. (Brukenfeld) to sell 606 certificates (later to become 1,212 certificates due to a two-for-one split). These were purchased on that date by claimant Satnick-Japha,

Inc. (Satnick-Japha) and claimant Spingarn & Co., Inc. (Spingarn), which firms later that day sought to rescind the purchase agreement. Abraham thereafter sought arbitration to compel the completion of the sale and payment. By stipulation of settlement dated February 5, 1973, a settlement sales price was agreed upon, and the certificates were physically transferred to Satnick-Japha and Spingarn.

These firms filed a claim with Whitman & Ransom, counsel for Westinghouse and Econo-Car International, Inc., attaching the certificates. Abraham also filed a claim, stating that the certificates were owned by Abraham on November 2, 1971, as Satnick-Japha and Spingarn had refused to honor the contract for sale. Abraham further argues that the stipulation of settlement of February 5, 1973, replaces any prior contract of the parties, and therefore Abraham remained the owner of the certificates until February 27, 1973, when the agreed transfer was consummated.

Whitman & Ransom, by letter of November 13, 1975, informed Abraham that its claim was rejected on the basis that Abraham had instituted proceedings to enforce the sale of November 1, 1971, and that the final stipulation provided for the consummation of the sale at a stipulated price. Therefore, Whitman & Ransom found

that Spingarn and Satnick-Japha were the beneficial owners as of November 2, 1971, and had the right to join the class.

It is clear that all claimants come before the court in a posture contradictory to their prior positions in the arbitration controversy. Accordingly, the estoppel concepts advanced by Satnick-Japha and Spingarn are of little use. It is also obvious that the question of who might participate in a settlement fund was never discussed in terms of the arbitration settlement, and that there was no intent common to the parties as to this subject represented by the February 5, 1973 stipulation.

Spingarn and Satnick-Japha point with some cogency, however, to Section 1(b) of the NASD Uniform Practice Code which states in part that:

"In trades between members, failure to deliver the securities sold, or failure to pay for the securities as delivered, on or after the settlement date does not effect a cancellation of the contract."

Sections 59 and 60 of this Code give the seller remedies of immediate sell-out and damages. However, Abraham sought to affirm the transaction. Accordingly, on November 2, 1971, Abraham considered the agreement of the parties a sale.

Abraham relies on Putnam v. Otsego Mutual Fire

Insurance Company, 45 A.D.2d 556, 360 N.Y.S.2d 331

(3d Dept. 1974), for the proposition that a compromise and settlement wipes out an underlying contract. That case is distinguishable from the case at bar. There, a party to a settlement tried to enforce a term of the underlying contract. There was no mention of the term in the settlement negotiations, and it was held not to apply to the settlement. Here, however, Spingarn and Satnick-Japha do not attempt to enforce a term of the contract, but simply to advert to a state of affairs that existed at a given date. Since Abraham sought to affirm the sale, Spingarn and Satnick-Japha had beneficial ownership of the shares on November 2, 1971.

E.g., Tangorra v. Hagan Investing Corporation, 38 A.D.2d 671, 327 N.Y.S.2d 131 (4th Dept. 1971). Accordingly, their claim is upheld.

So ordered.

Dated: New York, N. Y.
August 23, 1976

Charles F. Metzger
U. S. D. J.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A 100

DR. DAVID SIROTA, FRANCES MAISON,
IDA SIROTA and JOHN P. LYCETTE, JR.,:

Plaintiffs, : 72 Civ. 4899
(CMM)

-against-

ECONO-CAR INTERNATIONAL, INC.,
WESTINGHOUSE ELECTRIC CORPORATION,
et al

Defendants :

NOTICE OF APPEAL

S.D. OF N.Y.

SEP 23 3 46 PM '76

FILED
U.S. DISTRICT COURT

Notice is hereby given that ABRAHAM & CO. INC.
hereby appeals to the United States Court of Appeals for
the Second Circuit from the Order of Judge Metzner determin-
ing that SPRINGARN & CO., INC. and SATNICK-JAPHA, INC.
were owners of certain Westinghouse Electric Corporation
Interim Certificates on November 2, 1971, which Order was
entered in this action on August 23 1976.

Dated: New York, New York

September 23, 1976

*Brauner Baron Rosenzweig Kligler
& Sparker*

BRAUNER BARON ROSENZWEIG KLIGLER
& SPARKER
Attorneys for Abraham & Co. Inc.
120 Broadway
New York, New York 10005
(212) 732-5535

TO:

WOLF HALDENSTEIN ADLER FREEMAN
HERZ & FRANK
Attorneys for Springarn & Co., Inc. and
Satnick-Japha, Inc.
270 Madison Avenue
New York, New York 10016

*Good
Gives*

True 21
Service of ~~the~~ ³ copies of the within
is admitted this ²¹st day of March 1977

Wolf Holdenstein & Co. Lewis & Clark
Attorneys for Plaintiffs Appellees